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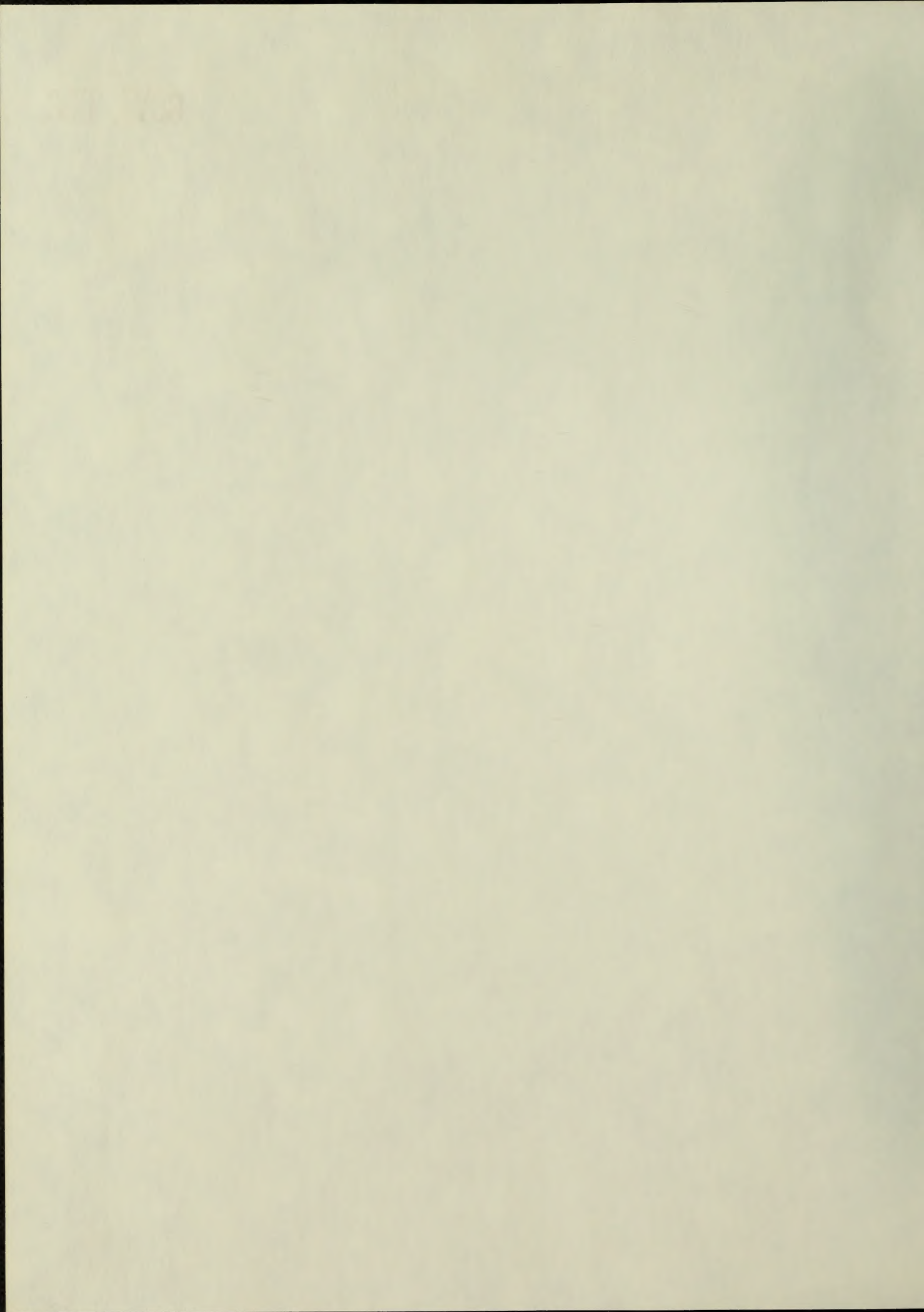
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# MEMORANDUM

TO : THE PRESIDENT  
FROM : THE ATTORNEY GENERAL  
SUBJECT: [Illegible]

## CHIEF JUSTICE REVERENDS THE GENERAL COURT PROCEEDINGS

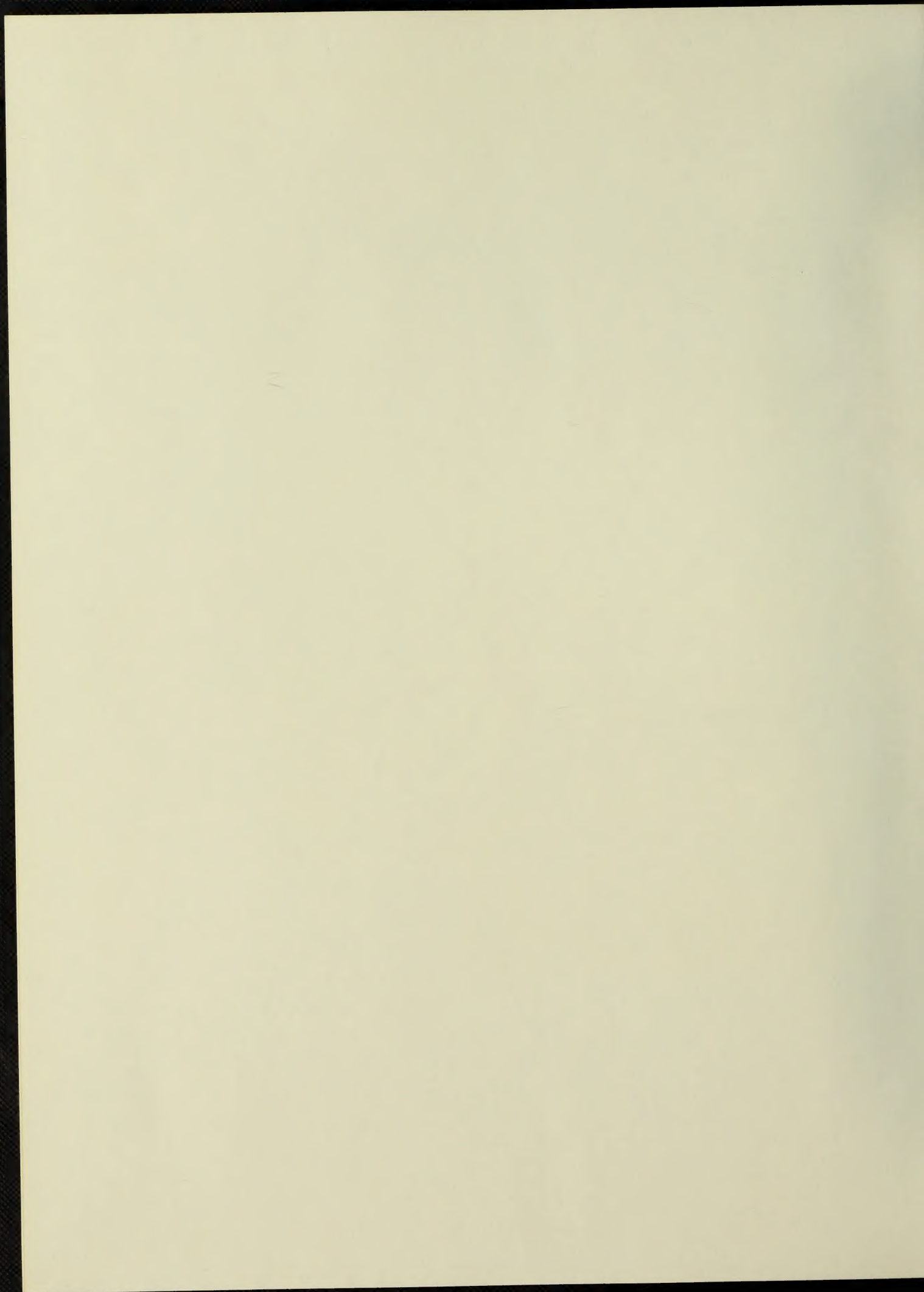
The undersigned, Attorney General, has the honor to acknowledge the receipt of your letter of the 10th inst. regarding the proposed amendments to the Federal Court Rules. The undersigned is in receipt of the proposed amendments and is currently reviewing them. The undersigned is in receipt of the proposed amendments and is currently reviewing them. The undersigned is in receipt of the proposed amendments and is currently reviewing them.

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# The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

## Bulletin of the Federal Courts

VOL. 7, NO. 1

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

JANUARY, 1975

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### CHIEF JUSTICE REVIEWS 1974 FEDERAL COURT PROGRESS

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SPEEDY TRIAL ACT PASSED

The year 1974 saw the contribution of several thoughtful and overdue proposals for court modernization, but 1974 did not see action on these earlier proposals . . . action is essential. . .

In fiscal 1974, 143,284 cases were filed in Federal district courts, an increase over 1973. Although there has been no increase in the number of Federal district judges since 1970, Federal district judges disposed of 139,159 cases more than in 1970. . . I hope the new Congress will pass omnibus judgeship bill . . . for 52 new district judgeships and 13 new circuit judgeships.

THE FOLLOWING ARE EXCERPTS FROM THE CHIEF JUSTICE'S YEAR-END STATEMENT; THE FULL TEXT IS AVAILABLE FROM THE FEDERAL JUDICIAL INFORMATION SERVICE]

Appellate courts have continued to face an oppressive workload. In fiscal 1974, the courts of appeals experienced a five percent increase in new cases filed; total filings reached an all-time high of 14,436 cases. Yet, authorized circuit judgeships (97) have remained constant since 1968, resulting in an eight percent increase in appellate cases per judgeship.

"The inequity of failure to provide any increase in pay for federal judges for almost six years is perhaps felt most extensively in the district courts, where six judges have resigned in the last 13 months and returned to private or corporate practice. That was as many resignations for such reasons in little more than one year as in the previous 34 years.

"The Federal Judicial Center, the respected research, development and training arm of the federal courts, is directing an increasing part of its effort to the problems of the district courts. . .

"The Center's District Court Survey promises to provide the first major exploration of the unresolved problems of caseload processing in the district courts. The successful pilot projects of a computerized docketing system, developed by the Center, will be expanded. The Center is also proceeding to experiment with computerized stenographic transcription of court proceedings. The Center's study of sentencing disparities is perhaps the most sophisticated exploration of that tremendously important subject to come from a government or private source.

(See REVIEW pg. 4)

The Speedy Trial Act of 1974 signed into law by the President January 3, 1975 will have a major impact on the operation of the Federal Judicial System, both in the coming year and the many years to follow.

Its primary purpose is to expedite the flow of criminal cases through the system, from the time of arrest to the beginning of trial. As conceived by the Congress, the program to expedite criminal cases will begin with a major study and planning effort on the part of all elements in the criminal justice system.

Because of the magnitude of this task, at the very last moment, the House added to the bill provisions that allow until July 1, 1975 to begin the actual planning process in the district courts themselves, which will be performed primarily through a criminal justice planning group.

(See TRIAL pg. 2)

#### IN THIS ISSUE:

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(REVIEW, from pg. 1)

agency.

"Over \$5 million to the taxpayer and 270,000 hours of jurors' time have been saved due to juror utilization studies of the Center and the Administrative Office of the U.S. Courts, as well as by cooperation fostered by the State-Federal Judicial Councils.

"Contributing to the progress of recent years are improvements developed by the courts and auxiliary agencies. The so-called 'omnibus pretrial hearing' sets all pretrial motions for one hearing, rather than having them scattered over an indefinite period, which often causes unconscionable delay. The 'individual calendar' has helped to reduce the time from filing to disposition by focusing responsibility for cases' progress on individual judges.

"After a successful pilot program, the Bureau of Prisons has instituted system-wide an internal 'Administrative Remedy Procedure' which has eased to some extent the growing workload of the federal courts and, more important, has provided a just procedure for hearing inmates' complaints about prison conditions.

"The district courts by themselves, however, cannot master the complex problems that society demands they resolve. I hope the new Congress will move rapidly on an omnibus judgeship bill... for 52 new district judgeships and 13 new circuit judgeships....

"Legislation is urgently needed to define and to broaden the responsibilities of United States magistrates, who can, with proper authorization, relieve district judges of numerous minor tasks....

"Court administrators are being trained in increasing numbers at institutions such as the Institute for Court Management. While circuit executives have provided much needed assistance... full-time district court executives are also needed to assist large metropolitan district courts in 22 federal districts.

"In the Supreme Court, the story is much the same. During the past unusually long term..., the cases on the docket exceeded 5,000 for the first time in history. Despite great efforts to keep up, judges still await a solution to the dilemma of an ever-increasing workload."

Thoughtful studies have illuminated the problems of the appellate courts:...

- The Study Group on the Case-load of the Supreme Court recommended the creation of a National Court of Appeals....
- The ABA's House of Delegates endorsed, in principle, a proposal calling for a National Court of Appeals.
- The Advisory Council for Appellate Justice has recommended a nationwide or multi-circuit division of the courts of appeals.
- The Commission on Revision of the Federal Court Appellate System is also considering a National Court of Appeals.

"Another means of reducing the burden of the Supreme Court is by reduction or elimination of three-judge courts... It is hoped that the new Congress will follow the lead of the current Senate in taking action... It is clear that the time has come to move from research and study to pertinent discussion and decision...."

## The Third Branch

Published monthly by the Administrative Office of the U. S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts

(TRIAL, from pg. 1)

Establishment of these groups will require considerable lead time in order for the judiciary to obtain appropriations authorized in the bill. In addition, the evaluation of present resources to determine requirements is necessary. Since the district court plans must be submitted before July 1, 1976, much of the preliminary work must be initiated immediately. Title II of the legislation which provides for pretrial services programs takes effect immediately and appropriations will be requested for the aspect of the law as soon as possible.

The substantive provisions Title I of the bill—the time limits will first take effect on July 1, 1976, on which date the time period from arrest to indictment may not exceed 60 days, and the time period from arraignment to trial may not exceed 180 days. The time limit of ten days between indictment or information, and arraignment, will take effect on that date also, but this time limit does not thereafter change. The other time limits are gradually reduced until on July 1, 1979, the time limit from arrest to indictment is 30 days and arraignment to trial is 60 days.

The planning groups, which must consist at a minimum of the Chief Judge, a U.S. magistrate, if any, U.S. Attorney, the Clerk of the district court, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the district, the U.S. Probation Officer, and a person skilled in criminal justice research who shall act as reporter for the group, are to be convened by August 30, 1975. The function of this group is to develop the district plan—a voluminous document which must, by the terms of the Act, include not only the procedures, systems and methods which the deadlines are to be met but also an analysis of the existing state of the docket, and information as to proposed innovations.



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needed rule or statutory changes, and needed appropriations, personnel, and the etc. The Federal Judicial Center has the responsibility to advise and consult with local planning groups.

During the interim period beginning September 29, 1975 each district must have in effect an interim plan to assure priority for trial or other disposition for persons detained awaiting trial and released persons designated by the U. S. Attorney as being a high risk. Trials of such persons must commence within 90 days. A pretrial detainee whose trial has not commenced within this period is entitled to be released from detention if the delay is not his fault.

Title II of the Act provides for the establishment of programs of pretrial supervision and supportive services in 10 demonstration districts. These districts will be selected by the Chief Justice after consultation with the Attorney General.

In keeping with the experimental nature of this program, in five of these districts, the program will be vested in the Probation Office, under a probation officer designated by the Chief of the Division of Probation of the Administrative Office of the United States Courts, and in the remaining five districts, the program will be under the direction of a Board of Trustees, appointed by the Chief Judge for the district.

The Boards are to be composed of one district court judge, the United States Attorney, two members of the bar—one of whom will be the Federal Public Defender, if any—experienced in the defense of criminal cases, the Chief U.S. probation officer and two representatives of community organizations. The Chief Pretrial Services Officer will be appointed by the Board of Trustees, and will be compensated not more than the rate of GS-15. The designated probation officer in the other five districts will receive compensation at not more than the rate for GS-16.

The pretrial services agencies would not only collect information and provide supervision of releasees, but would also operate or contract for operation of facilities for releasees, coordinate other agencies to serve as custodians, and assist persons in securing needed social and medical services.

Although appropriations are authorized in the Act for both Title I and Title II, actual funding must be provided by appropriations bills passed by the Congress. Accordingly, action by the Judiciary to initiate the programs must await the provision of funds. ¶¶

### ICM GRADUATES SIXTH CLASS

The Institute for Court Management on December 14 graduated twenty-one more court administrators and thereby qualified them as capable to hold administrative positions in the state and federal courts.

Four of the graduates were lawyers. Also graduating were two women executives. Harvey Solomon in his remarks commented on the fact that the number of women

students at the ICM organization was increasing each year.

Addressing the class after they had received their certificates, The Chief Justice said, "The contribution the Institute for Court Management has already made to the federal and state court systems is truly remarkable and we have only scratched the surface."

The Chief Justice added in his comments referring to the lawyer graduates, "Not long ago the idea was prevalent that a non-lawyer public servant could not serve in the capacity of a court administrator as effectively as a lawyer could. But that image is no longer in existence and the absence of an LL.B. is not a barrier." In this way The Chief Justice emphasized that the business of the courts calls for managerial skills and, while it may be helpful in certain instances to have a legal background, it was certainly not a prerequisite.

Referring to the history of ICM, The Chief Justice said, that were he to name some of the most important developments in the last fifty years within the judicial systems of this country, he would place high on the list the Institute for Court Management, the National Center for State Courts, and the National

(See ICM pg. 4)

The Chief Justice congratulated each I.C.M. graduate and distributed the certificates of completion. Pictured below are: Earl Morris, former ABA President and current I.C.M. Board Member, the Chief Justice, William Garretson of the I.C.M. graduating class, and Harvey Solomon, I.C.M. Director.





(ICM, from pg. 4) College of the State Judiciary. He also commended highly the seminars for appellate judges held at the Institute of Judicial Administration.

Following The Chief Justice's comments and those of ICM Board member Earl Morris, Jay M. Newberger spoke on behalf of the graduating class. In thanking Mr. Solomon for guiding them through their studies he said, "We recognize our responsibility for the continued growth and development of our managerial skills. We feel as a class we must pledge our continued support to achieve our stated goals to bring about good management for the courts of our country."

The Institute for Court Management located at Denver, Colorado was started in 1970, at the suggestion of Chief Justice Burger. At that time the Chief Justice pointed out that there were very few qualified individuals in this country who had the background and capabilities to serve the courts in a managerial capacity and he estimated there were but "a handful" of truly capable, outstanding court administrators currently serving the courts. Since then the ICM has graduated 181 individuals all of whom are today serving in responsible positions in or related to the courts. Six of the circuit executives serving the federal courts are graduates of ICM.

## LEGISLATION

During the last few days of the 93rd Congress, a number of actions were taken which are of considerable interest to the Judiciary.

The Congress passed and the President signed into law the Speedy Trial Bill, S.754, which is reported on page 1 of this issue of *The Third Branch*.

### TRAVEL & PER DIEM

S. 3341, which would increase travel allowances to a minimum of \$.15 per mile and per diem to \$35 per day was vetoed by the President

on December 31. As it went to the President it included a rider affecting transportation of veterans to Veterans' Hospitals. We anticipate that it will be reintroduced and acted upon early in the new Congress since the reason for the veto was the rider.

### JUDICIAL PANEL—SEC

S. 2904, which would amend present law to exempt actions brought by the SEC from the procedure for consolidating discovery under the Judicial Panel, which passed the Senate in October, was never reported out of the House Judiciary Committee and therefore died as far as the 93rd Congress is concerned.

### ANTITRUST—EXPEDITING ACT

S. 782, which revises the Expediting Act as it pertains to appellate review was signed into law on December 21, 1974 (Public Law 93-528). In addition, it requires proposals for consent judgments submitted by the United States to be filed with the district court and published in the Federal Register and public comment on the proposal.

Penalties for violations of the Sherman Antitrust Act are increased to felonies carrying a penalty of three years, and fines are raised to \$1,000,000, if a corporation, or if any other person, \$100,000.

The Expediting Act also provides for a direct appeal to the Supreme Court if, upon application of a party, the district judge who heard the case enters an order stating that immediate consideration of the appeal by the Supreme Court is of general public importance in the administration of justice. The Supreme Court may either dispose of the direct appeal or deny it and remand it to the Court of Appeals.

### JUDICIAL DISQUALIFICATION

S. 1064, which enacts into law the ABA's Code of Judicial Conduct as it relates to disqualification of judges and justices was signed

into law on December 5, 1974 (Public Law 93-512).

### THREE-JUDGE COURTS

S. 663, which deletes the requirement for three-judge courts in ICC cases has passed the Congress and was signed into law on January 2, 1975 (Public Law 93-584).

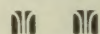
The general requirement for three-judge courts, which was to be eliminated by S. 271, remains in the law. This bill passed the Senate in June of 1973, but died in the House Judiciary Committee following hearings which were held on October 9 and 10, 1974.

### CRIMINAL CODE REVISION

A Committee Print of a revised version of S.1, a bill to revise the new Federal Criminal Code, has been prepared by the Senate Judiciary Committee. It is expected that this will be introduced in bill form early in the 94th Congress and that the Senate Judiciary Committee will report the bill out very shortly.

### RULES OF EVIDENCE

H.R. 5463, which will establish Rules of Evidence for the federal courts passed both Houses and was signed by the President on January 2, 1975. The effective date of the rules is 180 days following the date of enactment. (See story pg. 5)



### TRAVEL—PER DIEM BILL WILL BE REINTRODUCED

Although President Ford vetoed, December 31, legislation which would have substantially increased both per diem and travel allowances for all federal employees, all indications point to reintroduction, and early enactment of a similar bill soon after Congress convenes this month. (See TRAVEL pg. 6)



## CONGRESS ENACTS FEDERAL EVIDENCE RULES

In the final days prior to adjournment December 20, the 93d Congress enacted the Federal Rules of Evidence Bill.

The President January 2 signed the bill into law thus making the new rules applicable to all federal court proceedings commencing July 1, 1975.

The final version of the rules, which will become effective July 1, 1975, is the culmination of thirteen years of study and drafting by a distinguished advisory committee appointed by the Chief Justice, the Judicial Conference of the United States, the Supreme Court and Congress. The rules as now enacted into law, substantially amend those submitted to Congress by the Supreme Court February 5, 1973.

The Administrative Office of the U. S. Courts plans to make a wide distribution of the new rules in the near future. ■■

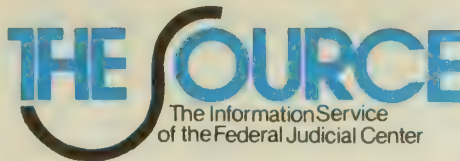
## FJC PUBLISHES VIDEOTAPING GUIDELINES

*Guidelines for Prerecording Testimony on Videotape Prior to Trial*, the first document of its kind, was recently published by the Center. The Guidelines were first devised for pilot district courts and have gone through several revisions. The present edition focuses on prerecording testimony rather than the more narrow concept of videotaped depositions because the Center's projects involve recording on videotape for the sole purpose of use at trial.

The emphasis of the Guidelines is on careful, step-by-step planning, and execution of all the procedures involved in: preparing for recording, recording testimony, preparing for playback, and operating the equipment for playback to a jury. Because the use of videotape and the technology itself are continually changing, and because additional knowledge from research projects about the impact of videotape

will be forthcoming, the Center's Innovations and Systems Development Division expects further revisions of the Guidelines during 1975.

Copies are available from the Federal Judicial Center Information Service.



Publications are primarily listed for the reader's information. Those in **bold face** are available from FJC Information Service.

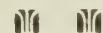
- Appellate Judicial Opinions. Robert A. Leflar. West, 1974.
- Benchbooks and Manuals of Procedure: Practical Guides for Bench and Bar. Robert A. Wenke. 53 Neb. L. Rev 521 (1974).
- Introduction to the Administration of Justice; an Overview of the Justice System and its Components. Thomas Francis Adams. Prentice-Hall, 1974.
- John Marshall: a Life in Law. Leonard Baker. Macmillan, 1974.
- The Selective Presentence Investigation Report. Publication No. 104. 1974. (Available from Probation Division, Admin. Off. of U.S. Courts)
- Seminars for Circuit Judges [FJC], Nov. 28, 1972, March 19, 1973. 63 FRD 453, Oct. 1974.

## A.O. PUBLICATIONS AVAILABLE

**Here is a list of selected publications currently available from the Administrative Office of U.S. Courts:**

- Reports of the Proceedings of the Judicial Conference of the United States (March 1969-March 1974)
- Annual Reports of the Director of the Administrative Office of the U.S. Courts (Recent years)
- U. S. Courts, Their Jurisdiction and Work (1971)

- Manual on the Code of Judicial Conduct (1974)
- Federal Probation Quarterly (Recent years)
- The U. S. Courts Pictorial Summary (1974)
- Persons Under the Supervision of the Federal Probation System (1968)
- Juror Utilization in the U. S. District Courts (1974)
- Court Management Statistics (1974)



## JUSTICE DEPARTMENT DEFENDING JUDGES SUED IN ALABAMA SUIT

The most recent in a series of lawsuits directed against numerous federal judges by the American Constitutional Rights Protective Association was filed in the U. S. District Court for the Southern District of Alabama, October 10, 1974.

The suit *Carden v. Hand*, charges the federal judiciary, together with the American Bar Association and various state judges and bar associations, with a conspiracy "to set up and effectuate a monopoly in the so-called Law Business or Practice of Law", and challenges the power of State and Federal Courts to set standards of conduct and prescribe codes of ethics for attorneys admitted to practice before them.

Because all of the active and senior district judges in the Southern District of Alabama are named in the complaint as parties to the suit, and following the decision of Chief Judge John R. Brown of the Court of Appeals for the Fifth Circuit, who is also named as a party, to disqualify himself as the designator, the Chief Justice December 18, 1974, designated Chief Judge Reynaldo G. Garza of the Southern District of Texas to serve in this case.

(See DEFENSE pg. 6)



(DEFENSE, from pg. 5)

Judge Garza has also been assigned four other lawsuits filed in different districts by members of the Association and having common issues of law and fact.

It has been arranged for the Department of Justice to provide representation for all Federal judges who have been or may be served with a complaint and summons in this matter. The Department assigned Charles S. White-Spunner, Jr., United States Attorney for the Southern District of Alabama, to enter an appearance for each of the judges and to represent them in the ensuing proceedings.

Mr. White-Spunner has filed a motion to extend the time for federal defendants to respond until January 27, 1975. This motion was submitted in order to avoid confusion caused by the twenty-day return date on the summonses, although Rule 12(a), Federal Rules of Civil Procedure, clearly permits federal officers 60 days to respond to a complaint following service on the U. S. Attorney.

The Department of Justice has also informed the Administrative Office that it is preparing a motion to dismiss this suit on behalf of all federal defendants. The motion will be based, *inter alia*, upon the following grounds: (1) Failure to state a claim upon which relief may be granted; (2) A lack of *in personam* jurisdiction in the United States District Court for the Southern District of Alabama over the out-of-state defendants named; and (3) judicial immunity.

The Office of the General Counsel of the Administrative Office will be pleased to respond to inquiries from judges regarding continuing developments in the course of this litigation.

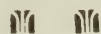
(TRAVEL, pg. 4)

The President in his veto message said that he endorsed the section of the bill relating to government employees' travel expenses, but that

he could not accept an amendment to the bill which granted similar expense allowances to disabled veterans. He said that the administration would support a new bill without the disabled veterans aspect. Travel expenses for disabled veterans will be handled separately.

Both Senator Lee Metcalf and Congressman Jack Brooks have stated they intend to introduce a new bill immediately after Congress convenes.

Since hearings will not be held on the measure, the bill should be cleared for the President's approval very early in the 94th session. (For details on the bill see **The Third Branch**, December 1974, p. 6.)



#### A.O. CREATING NEW DIVISIONS

In one of its most significant reorganizations in recent years, the Administrative Office of the U.S. Courts is in the process of creating two entirely new Divisions as well as a new unit which may become a third.

The A.O. is creating a Clerk's Division to deal directly with the needs of this growing and key segment of the federal judicial system. A new Division of Judicial Examinations has also been created to assume a role which historically has been carried out by the Department of Justice: Conduct periodic audits of federal courts.

The third unit is being formed specifically to respond to the responsibilities imposed upon the A.O. under the Criminal Justice Act and, as a result, will service the needs of such personnel as Federal Public Defenders and will supervise the administration of the assigned counsel system.

The A.O. has not yet appointed the division chiefs who will head the two new divisions or the official who will be in charge of the new Criminal Justice Act unit.

## STATE-FEDERAL

**Arkansas.** At its October State-Federal Judicial Council meeting, a resolution was adopted and presented to Judge Pat Mehaffy (CA-8) who stepped down as Chief Judge last August. The resolution, signed by Chief Justice Carleton Harris of the Supreme Court of Arkansas, memorializes the Council's "appreciation to Judge Mehaffy for his splendid leadership and unselfish dedication during his years of service as Vice-Chairman and its wish that he enjoy many more years of fruitful activity during his retirement." It concludes with an invitation to the Judge to attend all future meetings of the Council "as its guest with the heartfelt appreciation and sincere friendship of each member."

**Missouri.** At a recent meeting of this State's Council, it was agreed: (1) To meet every six months, or upon special call if warranted; (2) To develop, at the Missouri Penitentiary, administrative machinery which would afford prisoners a forum to air their grievances with a view of cutting down on frivolous filings in both state and federal courts, the final proposal to be submitted at the next Council meeting; (3) Where the validity of a state statute is challenged in declaratory action the Missouri Attorney General agreed, upon notice by the U.S. District Judge, to either intervene or file an *amicus curiae* brief. [This action was taken in reply to an agenda query: "Should we consider the problem presented when it is asserted that a state statute is unconstitutional and there is no litigant in the case to defend the statute in behalf of the State of Missouri?"] (4) To develop a cooperative plan for jury utilization in both state and federal courts for consideration at the Council's next

(See STATE FED pg. 7)



meeting. (5) To refer to a law school professor for study the problem of attempting to reach a consensus as to standards when ineffectiveness of council is alleged.

**New Jersey.** To meet a severe shortage in courtroom facilities in Camden County, New Jersey, Chief Justice Richard J. Hughes of the New Jersey Supreme Court, requested and obtained permission from Chief Judge Collins J. Seitz (CA-3) to use the federal facilities. In a letter of appreciation to the [then] Chief Judge Mitchell H. Cohen, Chief Justice Hughes said, "It is an excellent example of Federal-State cooperation on the

judicial level, which is very much in the public interest."

**Oregon.** State Circuit Judge Mitchell Karaman has a new courthouse now, but during a portion of the construction period when the Judge needed a courtroom to hear arguments the facilities of the federal court in Medford were made available to him.

**Virginia.** This state's State-Federal Judicial Council held a meeting at the time of the Fourth Circuit Conference last summer. Special guests at the meeting were the Chief Justice, and the directors of both the Federal Judicial Center and the Administrative Office of U.S. Courts.



## DIAL - A - REGULATION

A new program which the General Services Administration has recently put into effect offers callers an advance look at what the *Federal Register* will publish the following day.

A spokesman for the GSA said that the move was being taken to promote both publication use as well as usefulness of the *Federal Register*.

Interested persons may dial (202) 523-5022 at any time and hear a tape-recorded summary of selected documents scheduled to be proposed in the next day's issue. The *Register* is published weekdays and carries Presidential proclamations, executive orders and government agency regulations which have general applicability and legal effect.

In addition to the telephone service, GSA also is making the documents available for an in-person inspection. Documents filed for

publication may be seen the day before publication in room 8401, 1100 - 11th Street, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m.

A spokesman for the GSA said that members of the Judiciary may be especially interested in advance information concerning Justice Department regulations as well as proposed actions.

Congress set up a computer system to keep track of all legislation allowing members of the Judiciary to find out in seconds the status of any bill in Congress by dialing 202 (Area Code) 225-1772.

Operators are on duty week days from 9:00 a.m. to 5:00 p.m., Washington time, and all a caller need do is give them the number of the bill, or its author and subject, and moments later they can inform on what stage of the legislative process it is at that moment.

## AMENDED FREEDOM OF INFORMATION ENACTED

Congress voted late in November to override President Ford's veto of the Amended Freedom of Information Act which, its sponsors contend, will give the public greater access to information from government agencies.

The amended Act gives an executive department agency forty working days to review requested documents.

However, the agency may ask for, and federal courts are authorized to grant, additional time for the agency to complete its review.

The thrust of the amended Act is to speed up the review by the agency which has been asked to provide the information and remove any unreasonable cost to the person requesting the information.

The legislation calls for a judicial determination of the question of whether the requested documents are properly classified.

Senator Edward Kennedy said on the Senate floor prior to action by the Senate overriding the Presidential veto, "The bill passed by Congress recognizes that special weight should be given agency judgments where highly sensitive material is concerned. But that bill also expresses confidence in the federal judiciary to decide whether the greater public interest rests with public disclosure or continued protection."

## PERSONNEL

### Appointments

J. Calvitt Clarke, Jr., U.S. District Judge, E.D.Va., Jan. 2  
William S. Sessions, U.S. District Judge, W.D.Texas, Dec. 19  
William J. Bauer, U.S. Circuit Judge, 7th Cir., Jan. 3  
James P. Churchill, U.S. District Judge, E.D.Mich., Dec. 30



H. Dale Cook, U.S. District Judge,  
N.E.&W.D.Okla., Dec. 31

#### Nomination

J. Smith Henley, U.S. District  
Judge, N.D.Ill., Dec. 11

#### Confirmations

Donald D. Alsop, U.S. District  
Judge, D.Minn., Dec. 18

Henry Bramwell, U.S. District  
Judge, E.D.N.Y., Dec. 20

Edward N. Cahn, U.S. District  
Judge, E.D.Pa., Dec. 18

John T. Elfvin, U.S. District Judge,  
W.D.N.Y., Dec. 20

James M. Fitzgerald, U.S. District  
Judge, D.Alaska, Dec. 18

Joel M. Flaum, U.S. District Judge,  
N.D.Ill., Dec. 18

John F. Gerry, U.S. District Judge,  
D.N.J., Dec. 18

Alfred Y. Kirkland, U.S. District  
Judge, N.D.Ill., Dec. 19

Juan R. Torruella del Valle, U.S.  
District Judge, D.P.R., Dec. 18

Ellsworth A. VanGraafeiland, U.S.  
Circuit Judge, 2nd Cir., Dec. 20

#### Elevation

Reynaldo G. Garza, Chief Judge,  
U.S. District Court, S.D.Texas, Dec.  
28

#### Deaths

Roy M. Shelbourne, U.S. Senior  
District Judge, W.D.Ky., Dec. 29

Eugene Worley, Senior Judge,  
Court of Customs and Patent  
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**THE THIRD BRANCH**  
**VOL.7,NO.1 JANUARY 1975**

#### THE FEDERAL JUDICIAL CENTER

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OFFICIAL BUSINESS



January 30-31 Judicial Conference  
Criminal Justice Act Com-  
mittee, New Orleans,  
Louisiana

February 3-4 Judicial Conference  
Committee on Court Ad-  
ministration, Marco Island,  
Florida

February 7 Judicial Conference  
Committee on Bankruptcy  
Administration, Washing-  
ton, D.C.

February 19-21 Regional Seminar  
for U.S. Bankruptcy Judges,  
San Diego, California

March 6-7 Judicial Conference of  
the United States, Washing-  
ton, D.C.

March 16 Metropolitan Judges Con-  
ference, San Antonio, Texas

March 19-21 Regional Seminar for  
U.S. Bankruptcy Judges,  
Lexington, Kentucky

March 24-28 Orientation Seminar  
for Probation Officers, Wash-  
ington, D.C.

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# The Third Branch

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## Bulletin of the Federal Courts

D165-A

VOL. 7, NO. 2

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FEBRUARY 1975

## NATIONAL CONFERENCE ON APPELLATE JUSTICE HELD

Over 250 judges, lawyers and law professors gathered at Coronado, California, last month to discuss for three and one-half days growing problems in the appellate courts.

The conference was the culmination of three years of study by the Advisory Council for Appellate Justice. Among the group were twenty-five federal judges.

The Advisory Council, organized jointly by the National Center for Appellate Courts and the Federal Judicial Center, is made up of thirty of the most knowledgeable and concerned individuals in the country, all dedicated to improving the quality of justice on the appellate level.

Several volumes of preparatory material were distributed in advance of the meeting as well as two recent publications on appellate court procedures and appellate judicial opinions.

Groups of thirty gathered each day, during which time intensive discussions took place with all

participants expressing their ideas as to how appellate court problems can best be resolved.

Evening sessions included outstanding speakers advancing their views as to how appellate justice can be improved upon and overwhelming caseloads can be met.

Senator Roman L. Hruska, Chairman of the Commission on Revision of the Federal Court Appellate System, directed his remarks mainly to the concept of establishing a new National Court. He told his audience: (1) Many inter-circuit conflicts are not being resolved by the Supreme Court because of the press of more urgent business; (see Conference pg. 2)



"...our central problem is the reconciliation of tradition with reality." Judge Carl McGowan (D.C.—CA) summarizes Conference proceedings.

### IN THIS ISSUE:

A.O. Catalogs Publication

Travel Bills Re-introduced

Training Seminars Held ..

Personnel &amp; Calendar

### REVISION COMMISSION ENDORSES NATIONAL COURT

The Commission on Revision of the Federal Court Appellate System following two days of hearings on January 17-18 gave preliminary approval to the creation of a seven-member National Court of Appeals.

The new court:

- Would receive its caseload either by reference from the Supreme Court or by transfer from any of the present Circuit Courts of Appeals.
- Would consist of a seven-member permanent court of Article III judges.
- Would not limit the right of a litigant to appeal directly to the Supreme Court and all decisions made by the new court could be appealed to the Supreme Court. (See story above)



(from Conference pg. 1)  
 (2) futile, repetitive litigation in the circuit courts in the hope of finding a forum which will be favorable exacts a high price in waste;  
 (3) there is need for an alternative forum which would resolve questions of national law rapidly and efficiently subject to ultimate Supreme Court review; (4) there is strong argument for the creation of a new court with judicial capacity and authority to resolve inter-circuit conflicts.

The Senator went on to outline the Commission's proposal for a new National Court to be included in their forthcoming report. The court would have seven Article III judges. They would only sit en banc. Cases could be brought to the new tribunal either by (1) transfer to the court by one of the Circuit Courts of Appeals, the Court of Claims, or the Court of Customs and Patent Appeals; or (2) by reference, whereby the Supreme Court could refer to the newly established tribunal any case within the jurisdiction of the Supreme Court.

In answer to inquiries about final recourse to the Supreme Court, the Senator said any case decided by the new National Court, by whatever means, could be reviewed by the Supreme Court upon petition for writ of certiorari. If this final appeal was made no new briefs would be required, but short statements could be added if there were new considerations not present at the time of the initial application.

Professor Leo Levin, Director of the Circuit Revision Commission, explained some of the circuit problems he observed and noted that a recent survey of three thousand lawyers concerning oral argument and opinion writing showed that only 16 percent of the respondents thought argument time should be afforded in all cases. Where appeals border on the frivolous, as determined by the court, denial of oral argument was found acceptable by 89 percent of the lawyers in the

Fifth Circuit and 72 percent in the Second. Similarly, where the issues are clear and can be decided by reference to precedent, denial of oral argument was acceptable to 56 percent of the attorneys in the Second and 72 percent of those in the Fifth.

Professor Levin mentioned some recommendations the Commission was prepared to make: (1) that each circuit be required to establish an appropriate mechanism for rule-making by the circuit, with broad participation by members of the bench and bar; (2) that each circuit be required to publish its internal operating procedures "reflecting both a philosophy of accountability and a pragmatic recognition of the value of criticism and comment"; (3) the desirability of national minimum standards, including some reason for a decision rendered in every case, even if no more than a citation.

Judge Carl McGowan (CA-DC) addressing the final gathering commented that "some of the questions asked at this Conference have been, if not quite unthinkable, at least jarring to sensibilities and assumptions rooted in long-established traditions... Professions with any pretense to reliance upon the reasoning faculties do not shrink from inward inquiry—and they act at their peril when they fail to do so imaginatively, persistently and ruthlessly."

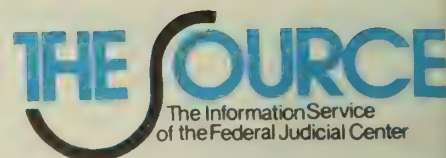
To each of the eight groups reporters were assigned who will make summaries of the group discussions for later circulation. ■

Published monthly by the Administrative Office of the U. S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

#### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts



Publications are primarily listed for the reader's information. Those in **bold face** are available from FJC Information Service.

- **Class Actions: A Symposium.** 12 San Diego L. Rev. 243 p. (Dec. 1974).
- **Criminal Justice in 2000 A.D.** 13 Ct. Rev. 34 (1974).
- **Federal Trial Handbook.** Robert S. Hunter. Lawyers Co-op, 1974 (\$40).
- **Guidelines for Pre-Recording Testimony on Videotape Prior to Trial; A Manual prepared by Federal Judicial Center.** (FJC No. 74-9). Nov. 1974.
- **Guide for Training Newly Appointed Federal Probation Officers.** Federal Judicial Center (FJC No. 74-8). 1974.
- **Grand Juries, Grand Jurors and the Constitution.** P. W. Sperlich and M. Jaspovice. 1 Hastings Const. L.Q. 63 (Spr. 1974).
- **Legal Problems of Dividing a State Between Judicial Circuits.** Arthur D. Hellman. 122 U. Pa L. Rev. 1188 (May 1974).
- **The Pre-Argument Conference: An Appellate Procedural Reform.** Irving R. Kaufman. 74 Colum. L. Rev. 1094 (Oct. 1974).
- **Reports of the [FJC] Conferences for District Court Judges.** Feb. 11-14, 1974, 64 F.R.D. 225 (Dec. 1974); April 8-11, 1974, 64 F.R.D. 475 (Jan. 1975).
- **The San Francisco Master Calendar System for Criminal Cases.** Walter F. Calcagno. 1 Brief/Case 1 (Dec. 1974).
- **Screening Practices and the Use of Para-Judicial Personnel in the U.S. Courts of Appeals; a Study in the Fourth Circuit.** (FJC No. 74-7). 1974.
- **Speeding Criminal Appeals in the Second Circuit.** Marianne Stecich. 58 Judicature 286 (Jan. 1975).

(See pg. 5, col. 1)



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#### THE JUDGES' PAY

Decisions of the federal courts make big news almost weekly, but the federal judiciary as an institution receives remarkably little public attention. This neglect is understandable, since judicial organization is rarely as dramatic a topic as congressional reform or as pervasive an influence as the structure of the Executive Branch. But, as Chief Justice Warren Burger emphasized in his year-end review of the courts, the judiciary has nuts and bolts problems which have as much constitutional importance as those of the other two branches.

Two among Chief Justice Burger's suggestions strike us as particularly important—an increase in the number of district and circuit judgeships and a raise in federal judges' pay. The Chief Justice asked Congress to hurry up and pass the omnibus judgeship bill prompted by a judiciary request two years ago. This bill would create 52 new district judgeships (for a total of 454) and 13 new circuit judgeships (for a total of 110). Justice Burger argues that federal judges disposed of nearly 140,000 cases in 1974, almost 22,000 more than in 1970, with no increase in personnel, and appellate cases per circuit judgeship have increased 80% since 1968, when Courts of Appeals were last expanded.

Along with the increased case load, warns the Chief Justice, inflation has been weakening the federal courts. Judges' salaries have been frozen for the past six years, during which the average civil servant's pay has increased more than 50% and the cost of living has gone up 42%. These pay raises are supposed to be decided by a presidential commission which also sets the salaries for Congressmen and Cabinet officers. But the latest commission recommendation, which would have raised judges' pay by 22.5%, foundered in the

Senate early in 1974 when election-wary Senators refused to support any measure which would have increased their own salaries as well.

The financial pinch, says Chief Justice Burger, has caused as many federal district judges to resign in the past 13 months to return to practicing law as have done so in the preceding 34 years. The number is small, six in all, but it does point to a problem of morale in the third coequal branch of the national government.


Adequate pay is so important for a corruption-free and independent judiciary that the framers of the Constitution included a prohibition against diminishing a federal judge's salary during his continuance in office. At the same time, as Federalist Paper 79 observes, they left out the prohibition against a pay raise which applies to the President, realizing that "it may well happen . . . that a stipend which would be very sufficient at (the judges') first appointment would become too small in the progress of their service."

We favor a cut, rather than further increase, in total government spending. But one of the dangers in the government's trying to use its budget to reform society is that truly essential government services may be starved. The Judicial Branch, dependent on the other two branches for its budgets, is particularly vulnerable and particularly deserving of protection.

If the judicial system becomes afflicted with overwork and incompetence because of lack of federal support, that decline will soon be reflected in the quality of the judicial decisions that have such a far-reaching impact on the nation's respect for justice and the principle of orderly legal processes. Any diminution of its effectiveness would seriously harm our constitutional structure.


#### ADMINISTRATIVE OFFICE PUBLISHING COMPLETE CATALOG

The Administrative Office of the U.S. Courts is publishing a complete catalog of all of its reports including those published by the Government Printing Office. The list totals more than seventy titles including the *Bankruptcy Cost Studies, Operations Manual—Probation Officers, Book for Jurors*, and the *Manual on the Code of Judicial Conduct*.


The catalog will be available shortly and can be obtained by contacting the Administrative Office of the U.S. Courts, Washington, D.C. 20544. 

#### FEDERAL PUBLIC DEFENDERS HONOR WILLIAM E. FOLEY

Deputy Director William E. Foley of the Administrative Office of the U. S. Courts was awarded the *Federal Defender Recognition Award of Merit* at a recent seminar for Federal Public Defenders in New Orleans.

The award of merit read, in part: "Many dream of equal justice; some are privileged to work for it. But a select few have fathered its implementation and realization. From those of us privileged to work for equal justice, we, the Criminal Justice Act Federal and Community Defenders, appreciatively and gratefully acknowledge William E. Foley as the one most responsible for the success of our offices and the resulting institutionalization of equal justice in our Nation." 

#### NEW JUDGESHIP BILLS INTRODUCED

Acting at the request of the Judicial Conference of the U.S., Senators Quentin Burdick and Roman L. Hruska introduced two bills to provide for additional district and appeals court judgeships January 21. S.287 would authorize 29 additional district judgeships while S.286 would provide ten additional judgeships for the U.S. Courts of Appeals. 



## TRAVEL—PER DIEM BILLS REINTRODUCED

Senator Lee Metcalf, Chairman of the Senate Subcommittee on Reports, Accounting, and Management and Representative Jack Brooks who heads the House Committee on Government Operations reintroduced bills calling for substantial increases in both travel and per diem for all government employees including members of the judiciary.

Both bills were reported out of committee early this month and are expected to be approved by Congress shortly.

President Ford vetoed a similar bill December 31 because he objected to provisions dealing with disabled veterans. The new bills do not carry the provisions which the President objected to, and thus spokesmen for both House and Senate Committees said they expected the President to sign the bill. The bills provide for per diem for judges up to \$50, and up to \$35 other personnel and mileage up to 18 cents per mile.

The exact allowance limits would be determined by each federal agency; in the case of the judiciary the Director of the Administrative Office of the U. S. Courts would determine the mileage and per diem allowance. ■■

## BILL SPLITTING 5TH AND 9TH CIRCUITS WILL BE INTRODUCED

The Senate Judiciary Committee plans to introduce a committee bill which would reorganize both the Fifth and Ninth Judicial Circuits by splitting each circuit into two divisions.

In its report on the bill, the committee recommended the creation of fifteen new judgeships, eight for the Fifth Circuit and seven for the Ninth Circuit.



Pictured above are Revision Commission Chairman Senator Roman L. Hruska, Executive Director A. Leo Levin and Senator Hiram L. Fong as the Commission met to discuss the proposed new National Court of Appeals last month.

The bill is an outgrowth of the work of the Commission on Revision of the Federal Court Appellate System which recommended December 18, 1973 that the two Circuits be divided creating two new Judicial Circuits. (See *The Third Branch*, January, 1974.)

The Senate committee report accompanying the bill, S. 2990, said that "the fundamental and the basic solution to increased caseload continues to be increased (judgeships). At the district court level we have increased the number of judges to correspond to increased workload.

"In many instances where the caseload of a federal judicial district within one state becomes too large or where conservation of the time and energies of judges and litigants have become a factor, the solution has been to create more than one judicial district within that state . . . It seems to the Committee that, within limits, a similar remedy can be applied to the courts of appeals for the several circuits."

The Committee recommended that the Fifth Circuit be divided into an Eastern and Western Division. The Eastern Division would consist of Alabama, Florida, Georgia, Mississippi, and the Canal Zone while the Western Division would include only Louisiana and Texas.

The Eastern Division would consist of twelve U.S. Court of

Appeals judges and the Western, eleven.

The bill would create a Northern and Southern Division of the Ninth Circuit consisting of Alaska, California Northern, California Eastern, Idaho, Montana, Washington, Oregon, Hawaii, and Guam with a total of nine judges and a Southern Division comprising Arizona, California Southern, California Central, and Nevada with eleven judges.

The Committee said, "Of paramount consideration is the fact that the Committee believes that if circuits with overwhelming caseloads are restructured into divisions rather than separate circuits, a base will be laid for a relatively flexible structure for courts of appeals which can accommodate any increase in caseload reasonably foreseeable within the next twenty-five years."

Each division would have its own Chief Judge, Circuit Executive and Judicial Council and control both the designation and assignment of circuit and district judges within its division.

The bill also sets up machinery through which judges in California may resolve "conflicts between the Southern and Northern Division with reference to the interpretation of California law or the Construction or application of federal law or regulations with reference to activities of or within the State of California." ■■



from The Source pg. 2)

Standards Relating to Court Organization [Approved Draft, b. 1974] ABA Commission on Standards of Judicial Administration.

Tennessee and the U.S. Court of Appeals for the Sixth Circuit. Harry Phillips. 10 Tenn. B.J. 6 (Nov. 1974).

The U.S. Magistrates: How Their Services Have Assisted Administration of Several District Courts; More Improvement Needed. U.S. Comptroller General. (B-133322) General Accounting Office, Sept. 1974. ❧❧

## EDUCATION & TRAINING HOLDS PROBATION OFFICER SEMINARS

In order to improve the training of all court personnel, the Federal Judicial Center's Education and Training Division has begun some new and innovative training programs.

A refresher training program was held in Brownsville, Texas, February 3-7. This seminar covered narcotic and alcoholic problems and treatment. In addition to probation officers and Federal Bureau of Prison personnel, other agencies participating included the Drug Enforcement Administration, Bureau of Customs, and U. S. Border Patrol.

The Center's staff was invited to participate in a meeting of Chief Probation Officers for the southeast region held in Dallas, Texas, February 12, 13, and 14.

Richard Mischke, Deputy Director, discussed new training programs and communication skills. The Center's staff has offered to provide short management training sessions for these annual meetings.

A seminar to improve supervisory skills was conducted in New York City, February 19-21. Participants included probation and clerical supervisors from the District of

New Jersey and the Southern and Eastern Districts of New York. The program was especially planned for this group and builds on the in-court management program which has been successfully developed and presented in several courts during the past year.

Since all supervisory personnel can not be trained in formal class programs, a correspondence course in supervision has been developed. Open to all supervisors and potential supervisors in the courts, the three-lesson course contains about four hundred pages of written material. Lesson One deals with supervisory duties and responsibilities; Lesson Two, with communications; and Lesson Three with human relations. Students are able to work at their own rate, with their work monitored by use of an exam with each lesson. Upon successful completion of the course, a certificate will be awarded. Also, a letter will be placed in the student's personnel file as an indication of his or her extra effort toward self-improvement.



## JUSTICE CLARK CITES "ASTONISHING PACE" OF VIDEO INNOVATION

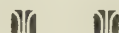
In an address January 31 to the Workshop on Legal Communications at Hastings Law School, Mr. Justice Tom C. Clark said that in both federal and state courts the use of television is being rapidly accepted.

Justice Clark said that "even in this era of accelerating change, the progress in the application of video technology to the law has set an astonishing pace. Justice Clark pointed out that "at least five states and the federal courts now have adopted rules permitting the videotaping of depositions but Ohio remains the only state authorizing videotape trials."



"One percent supervision is patently inadequate." . . . Judge Shirley M. Hufstедler (CA-9), addressing the National Conference on Appellate Justice.

(See Conference page 1.)



That despite some reluctance on the part of judges and lawyers to use this technology, he indicated "change is nonetheless coming, at an ever increasing pace, to legal processes and institutions. And we can expect this pace to continue as the courts' new research and training institutions help them adapt to modern computer, recording, and video technology, and to modern management procedures including sophisticated data gathering, processing and statistical analysis."

He told the workshop participants that "both the Federal Judicial Center and the National Center for State Courts have done pioneering research in videotaping and we can expect that their continuing involvement will provide an indispensable ingredient if this new technology is to receive widespread acceptance by the courts."



# LEGISLATION

## DRAFT LEGISLATION

Following the opening of the 94th Congress, the Judicial Conference of the United States submitted a number of draft proposals for legislation, some of which have already been introduced:

### OMNIBUS JUDGESHIPS

The Judicial Conference's request for 52 additional district judgeships has been submitted to both Houses of Congress. Senator Burdick has introduced S. 287, which provides for only 29 judgeships. The Conference's request for 13 additional circuit judgeships has also been submitted, but has not been introduced in that form. Senator Burdick has introduced S. 286, which provides for 10 additional circuit judgeships.

### THREE-JUDGE COURTS

S. 537, to eliminate the three-judge court in most instances, has been introduced by Senator Burdick.

### JUROR FEES & PROTECTION OF JUROR'S EMPLOYMENT

The Judicial Conference proposals have been introduced, with some changes, as S. 539.

### SIX-MEMBER JURIES

The Judicial Conference proposal has been introduced as S. 237. Another bill, which would provide also for six-member juries except capital offenses, has been introduced by Senator Scott as S. 430.

### TRAVEL & PER DIEM

Bills have been introduced in both Houses to increase the maximum amount of per diem and subsistence and mileage allowance payable to federal officers and employees traveling on official business.


## JUDICIAL SURVIVORS ANNUITIES

Senator McClellan has introduced S. 12, which will provide benefits to survivors of Federal judges comparable to benefits received by survivors of Members of Congress.

### INCREASED ANNUITIES —SECRETARIES OF JUSTICES & JUDGES

This measure has been reintroduced in the House by Representative Matsunaga as H.R. 1908.

### NOTE: GARNISHMENTS

The Social Services Amendments of 1974 (P.L. 93-647, Jan. 4, 1975) contains a provision which permits the garnishment of compensation of federal employees for enforcement of child support and alimony obligations. [There will be an A.O. bulletin issued on this proviso of the new law soon, which will include an analysis of other sections of the law which do not become effective until next July.] 

### BANKRUPTCY FILINGS HIT HISTORICAL HIGHS


The compound effect of inflation and recession coupled with widespread business failures has forced thousands of companies and individuals to file bankruptcy petitions with bankruptcy judges.

Figures compiled by the Bankruptcy Division of the Administrative Office of the U.S. Courts indicate that if the present trend continues for the balance of fiscal year 1975 between 240,000 and 250,000 bankruptcy petitions will be filed.

This compares with a high of 208,329 petitions which were filed during fiscal 1967. During fiscal 1974 a total of 189,513 petitions were filed.

The figures indicate an increase in the percentage of business filings as compared with individual filings. In the first three months of fiscal 1975, 11.2% of all cases filed were

filed by businesses.

Berkeley Wright, Chief of the Bankruptcy Division of the A.O., said that filings for this current year will undoubtedly break every prior record. As a result of the major increase in bankruptcy filings, the A.O. has asked Congress for supplemental funds to hire additional clerical personnel to assist in handling the record bankruptcy case load. 



### New Holdings

The Division of Education and Training maintains a cassette library containing various presentations that are delivered at Center seminars, institutes and conferences.

Early in 1974 a complete catalog of these cassettes, which are available to members of the Federal Judicial System on a two week loan basis, was published.

Since that publication new presentations have been added to the library's holdings and The Third Branch will continue to list the additions to keep readers current.

### JUDGES

#### J-77 PLENARY SESSION—THE FEDERAL BUREAU OF PRISONS AND THE U.S. BOARD OF PAROLE

Judge Oren R. Lewis,  
U.S. Dist. Ct. (E.D. VA.)

Wayne P. Jackson  
Chief of Probation, A.O.

Norman Carlson, Director  
Federal Bureau of Prisons

Eugene N. Barkin,  
General Counsel  
Federal Bureau of Prisons

George Reed, Member  
United States Board of Parole



## MAGISTRATES ARE HOLDING MORE IMMIGRATION HEARINGS

U.S. Magistrates are disposing of greater percentage of immigration offenses prosecuted in U.S. District Courts, thus relieving judges of this consuming work.

The following table shows the trend in recent years as Magistrates have continued to dispose of these cases.

IMMIGRATION CASES Disposed of by Magistrates					
	F.Y. 1972	F.Y. 1973	F.Y. 1974		
TOTAL	9,798	13,986	15,824		
S. Texas	3,003	4,985	6,710		
W. Texas	2,011	2,672	2,783		
S. California	3,529	4,787	4,703		
Arizona	609	663	1,101		
Commenced in District Courts					
	F.Y. 1970	F.Y. 1971	F.Y. 1972	F.Y. 1973	F.Y. 1974
TOTAL	4,614	5,027	5,904	2,208	1,921
S. Texas	1,451	2,240	2,223	298	127
W. Texas	1,386	1,192	2,332	431	443
S. California	1,054	679	498	617	543
Arizona	211	152	52	86	59

## 8 RULE 35

Judge William H. Webster,  
U.S. Ct. of Appeals, (8th Cir.)

## 9 JUDICIAL RESPONSIBILITY FOR THE DISPOSITION OF LITIGATION

Judge Frank J. McGarr,  
U.S. Dist. Ct. (N.D. Ill.)

## 10 A MODERN, EFFICIENT USE OF SUPPORTING PERSONNEL AND THE BAR

Judge Philip W. Tone,  
U.S. Dist. Ct., (N.D. Ill.)

## 11 THE ADMINISTRATIVE OFFICE—HOW IT CAN HELP YOU

Rowland F. Kirks, Director  
Administrative Office of the  
U.S. Courts

William E. Foley,  
Deputy Director  
Administrative Office of the  
U.S. Courts

Carl H. Imlay, General Counsel  
Administrative Office of the U.S.  
Courts

Gilbert L. Bates, Assistant to the  
Director, Administrative Office  
of the U.S. Courts

## 12 JUDICIAL ACTIVITIES AND ETHICS

Judge Edward A. Tamm,  
U.S. Ct. of Appeals, (C.A.-D.C.)

## J-83 ANATOMY OF A CRIMINAL CASE IN FEDERAL COURT

Judge Gerald B. Tjoflat,  
U.S. Dist. Ct. (M.D. Fla.)

## J-84 TRIAL AND POST-TRIAL PROBLEMS

Judge Damon J. Keith,  
U.S. Dist. Ct., (E.D. Mich.)

## J-85 THE UNITED STATES BOARD OF PAROLE

Maurice H. Sigler, Chairman  
United States Board of Parole

## J-86 STATE PRISONER CIVIL RIGHTS ACTIONS

Judge Ruggero J. Aldisert,  
U.S. Ct. of Appeals, (3rd Cir.)

## J-87 MANAGEMENT OF CIVIL CASE FLOW FROM FILING TO DISPOSITION

Judge Charles B. Renfrew,  
U.S. Dist. Ct. (N.D. Calif.)

## J-88 JUDICIAL RELATIONSHIPS

Chief Judge Joseph S. Lord, III  
U.S. Dist. Ct. (E.D. PA.)

## J-89 THE JUDGE AND THE CLERK OF THE COURT

Angelo Locascio, Clerk  
U.S. Dist. Ct. (Dist. N.J.)

## J-90 MANAGEMENT OF MISCONDUCT AT THE TRIAL

Judge Louis C. Bechtle,  
U.S. Dist. Ct., (E.D. PA.)

## J-91 SPECIAL CASES: A PANEL DISCUSSION

Moderator:  
Judge Alfred P. Murrah, Former  
Director, Federal Judicial Center

Panelists:  
Chief Judge William H. Becker,  
U.S. Dist. Ct., (W.D. Wash.)

Judge George H. Boldt,  
U.S. Dist. Ct., (W.D. Wash.)

## J-92 SENTENCING and PLEA DISCUSSION IN THE SENTENCING PROCESS

Moderator:  
Judge William J. Campbell,  
U.S. Dist. Ct., (N.D. Ill.)

Panelists:  
Judge Harold R. Tyler  
U.S. Dist. Ct., (S.D. N.Y.)

Ben S. Meeker  
Center for Studies in Criminal  
Justice, University of Chicago

## J-93 CALENDAR CONTROL AND PRE-TRIAL CONFERENCES

Judge Carl B. Rubin,  
U.S. Dist. Ct., (S.D. OH.)



# PERSONNEL

## Appointments

Donald D. Alsop, U.S. District Judge, D.Minn., Jan. 17  
 Henry Bramwell, U.S. District Judge, E.D.N.Y., Jan. 30  
 John T. Elfvin, U.S. District Judge, W.D.N.Y., Jan. 10  
 Joel M. Flaum, U.S. District Judge, N.D.Ill., Jan. 21  
 John F. Gerry, U.S. District Judge, D.N.J., Jan. 9  
 Alfred Y. Kirkland, U.S. District Judge, N.D.Ill., Jan. 31  
 Juan R. Torruella, U.S. District Judge, D.P.R., Jan. 7  
 Ellsworth A. Van Graafeiland, U.S. Circuit Judge, 2nd Cir., Jan. 14

## Nominations

Stanley S. Brotman, U.S. District Judge, D.N.J., Jan. 27  
 J. Smith Henley, U.S. Circuit Judge, 8th Cir., Jan. 28

## Deaths

Mac Swinford, U.S. District Judge, E. & W.D.Ky., Feb. 3

# DOJ JC calendar

**Mar. 6-7 Judicial Conference of the United States, Washington, D.C.**

**Mar. 16 Met. Chief Judges Conference, San Antonio, Tx.**

**Mar. 19-21 Regional Seminar for Bankruptcy Judges, Lexington, Ky.**

**Mar. 24-28 Orientation Seminar for Probation Officers, Washington, D.C.**

**April 27-30 5th Circuit Conference, Orlando, Fla.**

**July 21 9th Circuit Conference, San Francisco, Calif.**

**Sept. 18-19 Judicial Conference of the United States, Washington, D.C.**

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*THE THIRD BRANCH*  
 VOL. 7, NO. 2 FEBRUARY 1975

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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## Bulletin of the Federal Courts

VOL. 7, NO. 3

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MARCH 1975

## CHIEF JUSTICE REPORTS ON THE STATE OF THE JUDICIARY

The Chief Justice told the American Bar Association at its mid-year meeting in Chicago February 23 that federal courts, especially those in metropolitan areas, may soon face a crisis unless Congress creates additional judgeships and provides other resources—and stops the exodus of judges by swift action to increase salaries of judges.

[This is a summary of the Chief Justice's annual State of the Judiciary address. The full text is available from the Federal Judicial Center Information Service.]

In his Sixth annual State of the Judiciary report, the Chief Justice pointed out that the Speedy Trial Act of 1974 "is a matter of the highest priority since it will go into effect July 1 in its first phase. . . . The best estimates we can make are that they will call for a large amount of computer equipment and personnel in the Administrative Office and the Office of clerks of court in the 94 federal districts of not less than 100 additional employees. . . .

"The Administrative Office now estimates that substantially more than the previously requested 52 district judgeships will be required. Since the Congress undertook no 'impact study' as to the effects of this Act on the district courts, the Administrative Office has undertaken to do so and the tentative estimate is that the total additional cost for personnel and computer equipment will be upwards of \$10 million."

The Chief Justice called upon the American Bar Association to take immediate action to urge Congress to provide increased funds for personnel and equipment for the nation's federal courts in order to implement the Speedy Trial Act. In addition, he called upon the American Bar Association to assist in correcting "the very inequitable treatment of federal judges' salaries through an immediate 20 percent increase in salaries and prompt establishment of a procedure to maintain them on an automatic annual cost of living basis, such as now applies to the career civil service."

The Chief Justice also recommended that the federal judicial system:

- Eliminate mandatory appeals to the Supreme Court, allowing emergency cases to be expedited;



UPI PHOTO

The Chief Justice addressing the ABA's mid-year meeting

- Sharply restrict the 'diversity jurisdiction' of federal courts;
- Expand the authority of federal magistrates, thereby relieving pressures on federal judges;

(See ADDRESS pg 2)

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( ADDRESS from pg 1)

- Create a pool of federal judges for emergency assignment to various district courts.

Chief Justice Burger added that Bar Association aid was needed on other matters, including:

- Better training for public defenders and lawyers on the staff of United States Attorneys;
- Strengthening disciplinary procedures for lawyers' courtroom conduct and private dealings with clients;

The Chief Justice applauded a 1970 Report of the ABA Special Committee on Evaluation of Disciplinary Enforcement chaired by Justice Tom C. Clark and the establishment of the Center for Professional Discipline, and he urged representatives of state and local bar associations to implement the Committee's recommendations.



### GAO CALLS FOR COMPLETE CHANGE IN JUDICIAL PAY PROCESS

In a report to Congress February 25, the Comptroller General of the United States, Elmer B. Staats called for immediate and fundamental changes in the pay setting processes for officials in the Executive, Legislative, and Judicial branches of government.

The Comptroller General told Congress that "We believe early action should be taken to enact legislation to modify the procedure for adjusting top executive, legislative, and judicial salaries to keep these adjustments more nearly in line with the comparability adjustments provided for career employees.

Here are key excerpts from the Comptroller General's report. (The full text of the report is available from the Federal Judicial Center Information Service.)

"Effective Government does not just happen. It has to have good people run it. The Government must obtain and retain the most capable professional and managerial people to effectively manage Federal programs. . . . It is crucial that reasonable and equitable pay levels be achieved and maintained for top officials running the Government's huge, complex operations."

"... The situation is becoming untenable. . . . Fundamental changes are needed in the pay setting process for officials in the Executive, Legislative, and Judicial branches."

"... A mechanism to adjust top officials' salaries more frequently and to maintain equitable pay relationships should provide for (1) an orderly, automatic annual adjustment, when warranted, and (2) appointment of an independent commission to periodically examine appropriate pay relationships in depth and report its findings and recommendations to the President and the Congress."

"... We strongly recommend that the Congress enact immediate legislation to reform the salary adjustment process for top officials. The new process should provide that:

- The salaries be adjusted annually, beginning this year, on the basis of either the annual change in the cost-of-living index or the average percentage increase in GS salaries.
- An independent commission periodically review and evaluate the relationships between top officials' pay levels and between such levels and GS pay levels based on the relative responsibilities between and among such positions. The commission should report its findings and recommendations to the President and the Congress.

"... Though Federal judicial salaries have remained unchanged since March 1969, salaries of State chief judges have increased 44.2 percent. In 1969 only New York State paid a chief judge more than a Federal district judge. In 1974, 20 States compensated judges at rates equal to or greater than the Federal salary." ❧



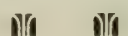
Top officials of the three branches of government met in the White House March 10 to explore the problems of judicial salaries, which have been frozen since March 1969.

The meeting was called pursuant to a letter from the Chief Justice, who set out in his letter the problems which have been created by the six-year freeze on judicial salaries and the failure of Congress to act on the need for 65 additional judges recommended in a 1972 study.

Attending the meeting were the President; The Chief Justice; Senator Mansfield, Majority Leader of the Senate; Senator Hugh Scott, Minority Leader of the Senate; Carl Albert, Speaker of the House; John J. Rhodes, Minority Leader of the House; Edward H. Levi, Attorney General of the United States; James T. Lynn, Director of the Office of Management and Budget; William T. Coleman, Secretary of Transportation; John O. Marsh, Director of Congressional Liaison; and Phillip W. Buchen, Counsel to the President.

The Chief Justice outlined in detail the threat to the preservation of a strong and independent judiciary if prompt remedial action is not taken. The President directed the Director of the Office of Management and Budget to meet with the leadership of the House and Senate Post Office and Civil Service and Judiciary Committees to explore feasible alternatives.

The meeting lasted for approximately one hour, after which House Speaker Carl Albert was quoted by the press as saying that the Chief Justice "made a convincing case" and that Congressional leadership viewed it sympathetically.





## APPELLATE CONFERENCE MARKED BY INNOVATION

A new concept in continuing judicial education was introduced March 11-14 at the Federal Judicial Center's conference, "The Nature of the Judicial Process: Federal Appellate Judges."

Whereas past programs have been geared to alerting both district and appellate judges to procedural and managerial aspects of the courts, this conference, more substantive in nature, was an attempt to expose the conferees, 23 U.S. Circuit Judges and one Court of Customs and Patent Appeals Judge, to a programmed examination of judicial decision making at the appellate level.

In the words of Judge Ruggero J. Aldisert (CA-3), Conference Chairman and FJC Board member, this program addressed itself to the "nuts and bolts of judging."

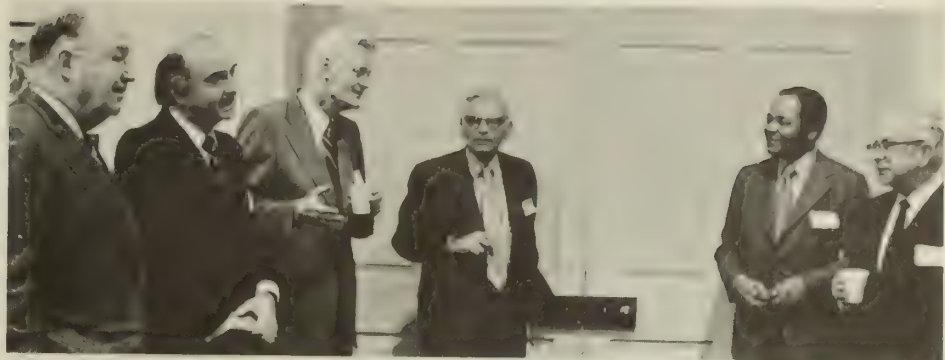
For over a year the planning committee worked to assemble an outstanding "faculty" to insure the program's superior content.

The four-day conference provided written and oral presentations by outstanding state and federal jurists and legal scholars including the revered Chief Justice Roger Traynor, (Sup. Ct. Calif., Ret.).

All members of the faculty shared a quality of background marked by a wealth of experience in the evaluation of the appellate decision making process, as well as an active relationship to the legal profession.

To assure maximum discussion of the provocative and divergent views of the speakers, a format was utilized whereby formal presentations of varying themes and theories were followed by free-wheeling question and answer periods.

Highlights of the conference included panel discussions on:



U.S. News Service

Gathered during break at Appellate Conference in March are l. to r. FJC Director Judge Walter E. Hoffman, (E.D.Va.), Conference Chairman Judge Ruggero J. Aldisert (CA-3); Planning Committee member Judge J. Braxton Craven, Jr. (CA-4); panelist, Professor Herbert Weschler, Columbia University Law School; Planning Committee member Judge Wade H. McCree, Jr., (CA-6); and Planning Committee member Chief Justice Roger Traynor, Supreme Court of California (Retired)

- The "Nature of Judge-Made Law" where moderator Judge Alfred P. Murrah (CA-10) was joined by panelists Justice Robert Braucher of the Supreme Judicial Court of Massachusetts, Erwin B. Griswold, former Solicitor General of the U.S., and Justice Albert Tate, of the Supreme Court of Louisiana.

- "Precedent and Policy", where moderator Judge Aldisert was joined by Chief Justice Roger Traynor, and Professor Robert E. Keeton, Harvard University Law School.

- "Consumers of Justice" led by Professor Daniel J. Meador of the University of Virginia Law School.

- "Procedures to Reach Decisions," moderated by Judge J. Braxton Craven, Jr., (CA-4) who was joined by panelists Justice Tate, Professor Herbert Weschler, Columbia University School of Law and Director of the American Law Institute and Professor Maurice Rosenberg of Columbia University School of Law.

- "The Review Function" was moderated by Judge Edward D. Re, U.S. Customs Court, who was joined by panelists Professor Kenneth Davis, University of Chicago School of Law, Chief Justice Traynor and Professor Rosenberg.

- "The Concept of Federalism—1975" with moderator Professor Charles A. Wright, University of Texas School of Law sharing the platform with Professor Paul J. Mishkin of the University of California, Professor Paul Bator, Har-

vard Law School and Professor Bernard Ward, University of Texas.

- "The View from the State Courts" moderated by Judge Griffin B. Bell, (CA-5) followed. His panelists were Justice Samuel J. Roberts, Supreme Court of Pennsylvania, Chief Justice Joseph Weintraub, Supreme Court of New Jersey (Retired), Justice Braucher and Professor Robert A. Leflar, University of Arkansas School of Law.

- "Federal-State Abrasions; federal injunctions directed to state judges", moderated by Judge Craven with panelists Judge James B. McMillan (W.D. N.C.) and Judge Frank W. Snapp of the Superior Court of North Carolina.

- "The October 1973 U.S. Supreme Court Term—Its Impact on Jurisdiction and Practice" with Professor Wright as the moderator and panelists Professor Ward, Professor Bator and Professor David W. Louisell of the University of California.

- "Appellate Judicial Opinions", led by Professor Leflar.

Judge Walter E. Hoffman, FJC Director, challenged the conferees to debate as fully as possible the issues raised and critically evaluate the program overall, so that similar conferences might benefit from their insightful suggestions.

The judges questioned whether the swelling of their dockets, often with new kinds of cases, has resulted in some part from an abdication of constitutional responsibilities by the legislative and executive branches. (See APPELLATE pg 4)

APPELLATE CONFERENCE CHAIRMAN



(CONFERENCE pg 3)

Many other questions arose prompting lively exchanges such as: "Do appellate courts in effect legislate and to what degree? How far should courts go to determine and carry out legislative intent? Do judges decide for the litigants alone or to establish precedent also? Do judges find or create law? Should a court apply a judgment prospectively or retroactively and how does it arrive at the decision? What is the role of panelization in decision making? What is the societal role of the federal courts and how do they relate to state court functions?"

Examined also were the problems encountered in opinion writing and the impact on the appellate courts of the U.S. Supreme Court decisions from the 1973 term, with special consideration given to the future of class actions.

ure that this conference had stressed substantive law.

A special visit was made by Chief Justice Burger who stressed the importance of the conference as a new threshold in continuing judicial education. He had high praise for Judge Aldisert and the members of his committee for their thoughtful and innovative approach in planning the program. He noted that the judiciary had reached the "collective maturity" to realize judges must continue to learn.

He recommended the practice of interchange between members of the trial and appellate bench so each could view the particular problems facing the other. To this end he commended for the consideration of the circuit judges setting aside time to sit in the district courts.

The Chief Justice spoke also of



Participating appellate judges applaud following one of the panel discussions at the March Conference.

In remarks concluding the conference, Mr. Justice Harry S. Blackmun, United States Supreme Court, stated his awareness of the importance of the position of the appellate courts. This is where the "transformation from legal theory to legal principle takes place," he said.

The Justice noted the constant changes in the law, and praised the flexibility of the U.S. Constitution. He briefed the conferees on the highlights of the 1974 Supreme Court term and expressed his pleas-

the relentless efforts from many quarters to bring salaries of judges in line with the hard realities of a fluctuating economy. This is necessary, he said, to preserve the essential high quality of the bench.

In response to Judge Hoffman's request, the detailed critiques of the participants will be used to strengthen the second conference in this series which begins May 13.

Initial reactions were positive and enthusiastic and most judges felt the discussions were handled with scholarship, insight and wit.

## CENTER IMPLEMENTS COMPUTER-AIDED TRANSCRIPTION PROJECT

The Center recently implemented the first phase of a computer-aided transcription project. Under the project reporters are provided training and the use of an electronic transcriber for approximately three months.

During the three month period, reporters will be "tuned" to a computer-aided transcription system. The Center will pay for transcription of the first 200 pages using the computer and will subsidize the cost of the next 800 pages. Thereafter, reporters will provide their own equipment and will pay the complete computer transcription fee. Every three months, a new class of reporters will be trained and will be provided equipment and transcript subsidies.

The purpose of the project is to stimulate the use of computer-aided transcription; to determine what percentage of existing reporters can use it effectively; to determine the effect it will have on transcription delays and to determine its economic feasibility for reporters. The project also includes experimentation with several types of transcription services in order to determine what steps can be taken to reduce the costs of computer-aided transcription.

The Center is now working with two companies who provide this service and plans to include two more companies in the project during the coming year. Twelve reporters are now active in the project. It is expected double that number will be involved by May (More details on the project will be published in a later issue of *The Third Branch*.)

## JUDGE MacKINNON REELECTED

Judge George E. MacKinnon (CA-DC) has been reelected by the Judicial Conference to a 3-year term on the Board of Certification. Judge MacKinnon was originally named to fill the Board vacancy after Chief Judge Frank M. Johnson (M.D.Ala.) stepped down at the end of his term.



## EBERSOLE APPOINTED FJC DEPUTY DIRECTOR

Judge Walter E. Hoffman announced Board approval of the appointment of Joseph L. Ebersole as Deputy Director of the Center to replace Richard A. Green who recently resigned to return to private practice.

Mr. Ebersole has been a senior staff member of the FJC since 1969 when he was appointed Director of the Division of Innovations and Systems Development. He is a member of the State Bar of California and holds a J.D. from the University of Southern California where he pursued graduate work in psychology prior to law school.

Before joining the Center he spent 14 years in managing research and development organizations. His experience includes positions in quality control, electronic research and development, educational research information systems and judicial administration. Mr. Ebersole was with Rockwell International immediately prior to becoming a member of the Center staff.



Deputy Director Joseph L. Ebersole

## REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

I am pleased to present to you herewith a brief report on the status of the judicial business of the United States courts of appeals and the United States district courts during the six month period ending on December 31, 1974.

In comparison with the 1st half of 1974, the incoming caseloads of the courts of appeals declined about one percent, but the combined civil and criminal caseloads of the district courts increased thirteen percent and bankruptcy case filings increased one-third.

If current trends in new case filings continue for all of fiscal year 1975, the courts can expect total filings for the full year to be approximately those shown in the following table.

Cases Filed	F. Y. 1974			F. Y. 1975	
	First Half	Full Year	First Half	Full Year	
Appeals	8,044	16,436	7,959	16,580	
Criminal	18,713	39,754	20,354	43,380	
Civil	49,043	103,530	55,952	116,800	
Bankruptcy	87,576	189,513	116,644	250,800	

The total filings of civil and criminal cases per judgeship in the district courts was 358 in 1974 and 52 in 1973. If the projections shown in the preceding table prove to be accurate, the 1975 filings per judgeship ratio will reach 400, an increase of nearly 12% over 1974.

### U.S. Courts of Appeals

The number of appeals filed during the first six months of the

fiscal year 1975 numbered 7,959 compared to the 8,044 filed during the comparable period for 1974. This represented a decline of slightly more than 1%.

Appeals terminated rose by approximately 7% during the first half of the fiscal year as 7,651 appeals were disposed of compared to 7,136 terminated during the first six months of 1974.

Even with the rise in the termination rate the appeals backlog rose to 11,778 as of December 31, 1974 or 3.6% above the 11,364 appeals pending on December 31, 1973.

### U.S. District Courts

#### Civil Cases

During the first six months of the fiscal year 1975 the civil workload continued its upward trend as

nearly 56,000 civil actions were filed. This represented an increase of 14% over the 49,043 civil cases filed during the first half of the fiscal year 1974.

The district courts were not able to keep pace with the increased workload. Only 49,750 cases were terminated. This rate of terminations, however, was 7.5% above the rate established during the com-

parable period from last year. But the backlog of civil cases grew to 113,432, 6% higher than the pending caseload on June 30, 1974, and 9% above the 104,101 cases pending on December 31, 1973.

The number of civil cases pending three years or more (excluding land condemnation) rose by more than 10% during the first half of the fiscal year 1975. As of December 31, 1974, the backlog of three year old cases was 8,112—representing 7.3% of all pending civil cases. This was an improvement over a year ago when the percentage of civil cases three years or older was 7.6%.

#### Criminal Cases

The downward trend of the last two years in criminal case filings in the district courts appears to be reversing. During the first six months of 1975, criminal case filings numbered 20,354, nearly 9% higher than the 18,713 cases filed during the first half of 1974. The 20,354 criminal cases included 27,027 separate defendants.

In the criminal case area the district courts were able to keep pace with the increased filing rate. There were 20,546 cases terminated, or 192 more than were filed. Thus the pending caseload dropped nearly 1% during the first half of the year and was down more than 4% below the backlog one year ago. (Full text available from A.O.)





Judge Robert H. Schnacke



Judge Ruggero J. Aldisert

### JUDGES ALDISERT, SCHNACKE ELECTED TO FJC BOARD

The Judicial Conference of the United States March 7 elected Judges Robert H. Schnacke (N.D. Ca.) and Ruggero J. Aldisert (CA-3) to the Board of the Federal Judicial Center.

Judge Aldisert was originally elected to the Board in 1972 to fill the unexpired term of Chief Judge Frank M. Coffin when he was elevated to the Chief Judgeship of the First Circuit and was therefore ineligible to serve on the Board. Judge Schnacke is replacing Chief Judge Adrian A. Spears of the U.S. District Court of the Western District of Texas whose term has expired.

Judge Schnacke was appointed United States District Judge for the Northern District of California on October 15, 1970 and entered on duty October 28, 1970. He attended the University of California, Berkeley, and received a J.D. degree from the Hastings College of Law in 1938. He formerly served in the United States Army, 1942-1946; as Deputy Commissioner of Corporations, San Francisco, 1947-1950; as United States Attorney, Northern District of California, 1958-1959; and as a California Superior Court Judge, 1968-1970.

He is a member of the American Bar Association, the Federal Bar Association, the American Judicature Society, the American Arbitration Association and the San Francisco Bar Association.

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### AMERICAN BAR ASSOCIATION HOUSE ACTIONS AFFECT FEDERAL JUDICIARY

The 343-member House of Delegates of the American Bar Association held its midyear meeting in Chicago last month, and took formal action on several matters related to federal judges and their courts.

A formal release summarizing all House actions will be published later, but the following is a resume of some pertinent issues acted upon by this body:

- At the request of the Committee on Judicial Selection, Tenure and Compensation, withheld action on the bill introduced by Senator Sam Nunn of Georgia, which would establish a Council on Judicial Tenure with power to investigate claims of misconduct or disability of any judge or justice. The bill was endorsed by the Conference of Federal Trial Judges. Since the subject is being reconsidered by the 94th Congress and since the House endorsed the concept as late as 1972, no further action was deemed necessary until another bill is introduced.
- Withheld action on a resolution requesting ABA approval of the draft of Uniform Rules of Evidence of the National Conference of Commissioners on Uniform State Laws.
- Failed to endorse a resolution of the Special Committee on Federal Practice and Procedure to bar a federal judge from presiding in a non-jury trial of a case when he has presided at a settlement conference in the same case, "except where all parties request in writing that the original judge preside at the trial." Speaking vehemently against the resolution were Lawrence Walsh, incoming ABA President, Albert E. Jenner, Esq. of Chicago, and the Judicial Administration Division Delegate. The Board of Governors recommended against the Resolution.
- After considerable debate passed a resolution supporting the concept of *voir dire* by counsel as a matter of right in federal, civil and criminal cases. Both the Council of the Judicial Administration Division and the Board of Governors recommended against the Resolution. ■
- Passed unanimously a Resolution of the Division of Judicial Administration calling on the American Bar Association to "dedicate the efforts of its officers, staff and members on a crisis basis, to obtain affirmative immediate action to increase the compensation of members of the judiciary, state and federal."



## JUDICIARY TESTIFIES ON BUDGET PROPOSALS

The House Appropriations Subcommittee recently held hearings on the Judiciary budget for fiscal year 1976 and supplemental appropriations for fiscal 1975.

Judge Carl A. Weinman, (S.D. Oh.) Chairman of the Judicial Conference Budget Committee, his colleague, Chief Judge Robert E. Maxwell (N.D. W.Va.); and Rowland F. Kirks, A.O. Director, testified concerning requests for circuit and district courts and the appropriation requests for the A.O. Judge Walter E. Hoffman testified for the FJC.

The proposed increase in budget authority for the circuit and district courts is \$21,260,000. Judge Weinman testified that approximately 50% of the increase was for "pay costs" and other mandatory expenses. The largest budget item is a request for 271 new probation service positions: 155 officers and 116 clerk-stenographers. With the addition of these officers, the average supervision caseload could be reduced to a ratio of 50 to 1.

The budget included a request for 109 additional deputy clerks, 24 for the circuit courts and 85 for the district courts. This was based on the ratio of 1 deputy clerk per 75 filings for the courts of appeals and 1 deputy clerk per 100 civil and criminal filings for the district courts, including filings equivalents for other activities. Twenty deputy clerks were requested to establish central traffic violations bureaus in districts which do not have them.

For the courts of appeals, provisions were made for 9 deputy circuit executives, 9 senior staff law clerks and 18 additional positions for the special legal staff in the Ninth Circuit and various other positions approved by the Judicial Conference. Fifty-four new positions were included for the magistrates system (18 magistrates and 36 clerks) and 41 bankruptcy clerks were included for the bankruptcy system.

Judge Weinman said that during the first half of fiscal 1975, compared with 1974, civil filings rose 14 percent and that if this trend continued, it would present a very serious problem especially since the courts are diverting much of their attention to criminal case backlogs. He pointed out that criminal case filings during the same period were up 9 percent; bankruptcy filings were up 33 percent.

Provisions also have been made for automated legal research services for the courts of appeals and to institute a program for computerized transcription.

The supplemental appropriation requests for fiscal 1975 included \$2.5 million to be allocated to district courts to develop and implement plans for speedy trial. Ten million dollars has been requested for pretrial services agencies in ten judicial districts to be utilized until September 30, 1976.

Supplemental funds were requested by the FJC to develop and install computer systems (COURTRAN II) in 25 district courts to allow them to comply with the requirements of the Speedy Trial Act.

The A.O. requested a supplemental appropriation to provide computer capability for receiving statistical data from courts via teleprocessing. Additional personnel have also been requested by the A.O. to establish pretrial services agencies, operate district court planning groups, analyze speedy trial plans, compile statistical data, provide logistic support, and also provide supporting personnel for bankruptcy judges.

## The Third Branch

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Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts

## R. HANSON LAWTON SELECTED EIGHTH CIRCUIT EXECUTIVE



Chief Judge Floyd R. Gibson of the United States Court of Appeals for the Eighth Circuit has announced the appointment of R. Hanson Lawton to be the new Circuit Executive for the Eighth Circuit.

Mr. Lawton will assume his duties at the Court's St. Louis, Missouri headquarters March 15.

He comes to the federal judicial system from his position as acting director of the North Central Regional Office of the National Center for State Courts. The regional office, headquartered in St. Paul, Minnesota, serves 12 states.

A native of Ft. Madison, Iowa, he received his B.A. in 1963 from the University of Iowa and his J.D. from the University of Iowa College of Law three years later.

In the past he has served as Court Administrator for the Iowa Supreme Court and as international finance counsel for a general aviation corporation.

Mr. Lawton replaces former Circuit Executive Robert J. Martineau who resigned recently to accept a position as a state court administrator in Wisconsin. III



## FEDERAL ENFORCEMENT OF SUPPORT ORDERS ENACTED

The Social Services Amendments of 1974, P.L. 93-647, which was signed into law on January 4, 1975, contains a provision for limited federal court enforcement of support orders and provision for garnishment of the salaries of federal employees to enforce their legal obligations to provide child support or make alimony payments.

The provision for enforcement of support orders was added in the Senate, and despite the disapproval on numerous occasions by the Judicial Conference, survived the congressional conference and appeared in the final version.

As enacted, the legislation provides for two means by which support orders may be effectively enforced. Neither really becomes operative until all other state avenues of relief have proven unfruitful.

The Secretary of Health, Education, and Welfare will establish a separate organizational unit in the Department, which will have responsibility for establishment of standards for state programs for locating absent parents, establishing paternity, and obtaining child support. *It will receive applications from states for permission to use the Federal courts to enforce court orders for support against absent parents.*

The application may be granted if the finding is made that another state has not undertaken to enforce the court order of the originating state against the absent parent within a reasonable time, and that utilization of the federal courts is the only reasonable method of enforcing such order.

Section 460 of the Act provides that "The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of HEW under section 452(a)(8) of this Act. [Sec. 452(a)(8) relates to the granting of

applications from states to utilize the federal courts.] A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides." While the normal jurisdictional limit does not apply to these actions, the usual requirement of diversity continues to apply.

It must be particularly noted that the act does NOT authorize individuals to utilize the federal courts—it authorizes the states to utilize them. This places a very different impact on the legislation.

In order to comprehend this legislation, it is necessary to view it in the context of prior law, which required the states to undertake enforcement of support orders (including cooperation with other states and access to Social Security and Internal Revenue records) against absent parents of children receiving welfare (AFDC). This mechanism was found to be ineffective. State plans appeared to exist only on paper.

The new law will require states to have plans which will be reviewed and audited by the new organizational unit in the Department of HEW. If a state does not have an acceptable program, the Department will be required to impose a penalty of the loss of 5% of the federal matching funds for AFDC payments to that state.

The Senate report points out explicitly that if states must ask for access to federal courts because of failure of a particular state to cooperate or to effectively enforce the Uniform Reciprocal Enforcement of Support Act, "this should also lead the Secretary to question the effectiveness of that State's child support program." These provisions do not take effect until July 1, 1975.

The law also provides for another collection mechanism—through the income tax law. Although this is designed primarily for AFDC cases, where the present parent assigns family support rights to the State as a condition of eligibility for wel-

fare, it will also be available to non-welfare cases, at a fee if the state wishes.

The collection of these sums is to be handled in the same manner as tax deficiency. Before a state may use the IRS mechanism, it must establish to the satisfaction of HEW that the other process has been diligently pursued, but without success. The above provisions also do not take effect until July 1, 1975.

The new law also provides for garnishment of Federal employees' salaries to enforce legal obligations to provide child support or to make alimony payments. This provision of the law is effective as of January 4, 1975, and the administrative mechanisms are being worked out. The Judiciary payroll is, of course, centralized in Washington, D.C.

Therefore, service of writs of attachment will be made at the Washington office of the Administrative Office, and not upon the individual court offices. Additional information will be provided shortly to all Judiciary personnel regarding procedures under this provision.

## ADMINISTRATIVE OFFICE OPPOSES CITY TAXATION OF SENIOR JUDGES

In a formal comment on proposed city taxation regulations, Administrative Office Director Rowland F. Kirks told the Treasury Department that "It is highly questionable whether the pay of a retired federal judge constitute income 'earned' in any municipality since such emolument is payable regardless of any labors performed after retirement, and any such labors performed are voluntary and not the subject of compensation over and above retired pay.

In any event it is my position that the retired pay of a federal judge and of a bankruptcy judge should be exempted from the federal withholding requirements." He also said that the proposed regulations . . . "facially appear to us not to require our withholding of cit-





34 experienced District Judges returned to the Center in February to sharpen their case processing skills

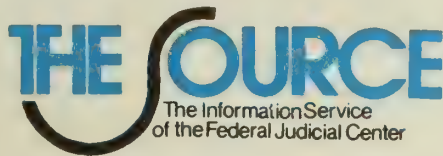
income taxes for most senior, retired, federal judges, the early clarification and slight broadening of the regulations to provide an exception as to all senior (retired) judges seems necessary."

In addition, Mr. Kirks said that, "... regarding the retirement characteristics and voluntary work status of all senior United States judges, about which city revenue agents may not be cognizant. I suggest language... which would make clear to city revenue agents that all senior United States judges would not have city taxes withheld on a regular basis by our Office, and I also suggest language... which would exempt the Administrative Office of the United States Courts from withholding city taxes on retired bankruptcy judges."

Mr. Kirks also stated that, "There are presently about 126 retired Federal judges who are performing some substantial voluntary services, from which any one of them could withdraw at any time without affecting his full retirement income."

"In summary", Mr. Kirks said, "a senior judge who volunteers to perform services in the same state for no additional salary should be considered as a retired person for purposes of the withholding agreements. Also, a senior judge who has an "official station" within a municipal taxing jurisdiction should receive the same withholding treatment as a judge who has an "official station" outside a taxing jurisdiction."

Full text available from A.O.)



Publications are primarily listed for the reader's information. Those in **bold face** are available from FJC Information Service.

- Advocacy as Craft—There is More to Law School Than a "Paper Chase". Irving R. Kaufman. 28 Sw. L. J. 495 (Summer 1974).
- American Implications of Sentencing by Computer. Roberta L. Jacobs. 4 Rutgers J. Computers & Law 302 (1975).
- The Constitutional Requirement for a Written Statement of Reasons and Facts in Support of the Sentencing Decision: A Due Process Proposal. Michael C. Berkowitz. 60 Iowa L. Rev. 205 (Dec. 1974).
- The Judicial Process; An Introductory Analysis of the Courts of the U.S., England and France, 3d ed. Henry J. Abraham. Oxford Univ. Press, 1975.
- Justice in Sentencing: Papers and Proceedings of the Sentencing Institute for the 1st and 2d U.S. Judicial Circuits. Leonard Orland. Foundation Press, 1974.
- The Purpose of Due Process: Fair Hearing or Vehicle for Judicial Review? Wayne McCormack. 52 Texas L. Rev. 1257 (Nov. 1974).
- The Role of the Jury in Choice of Law. Willis L.M. Reese, Hans Smit, George B. Reese. 25 Case W. Res. L. Rev. 82 (Fall 1974).

## U.S. JUDICIAL CONFERENCE HOLDS MARCH MEETING

For two full days the Judicial Conference of the United States met at the Supreme Court to discuss a myriad of issues and problems facing the federal courts. A comprehensive report will be issued by the Administrative Office later.

Some pertinent actions taken by the Conference were:

- Discussed at length the implications of the Speedy Trial Act.
- Assigned to the Conference's Criminal Law Committee, consideration of the implementation of Title I of the Speedy Trial Act and to the Probation Committee Title II.
- Discussed S.1, the bill to revise the federal criminal code now pending in Congress.
- Endorsed the concept of subjecting active federal judges to review by a disciplinary council of federal judges as a response to complaints from outside sources. A bill to this effect was introduced in the 93rd Congress (2d Sess.) by Senator Sam Nunn of Georgia but was not acted upon before adjournment.
- Made two four-year appointments to the Board of the Federal Judicial Center: Judge Ruggero J. Aldisert (CA-3), and Judge Robert H. Schnacke (N.D. Ca.)  
(see story pg 6)
- Reappointed Judge George E. MacKinnon (CA-D.C.) to a three-year term on the Board of Certification.



# dojfc calendar

- April 8-10 In Court Management Training Institute, Washington, D.C.
- April 17-18 In Court Management Training Institute, New York, New York
- April 21-22 In Court Management Training Institute, New York, New York
- April 21-22 Judicial Conference Civil Rules Committee, Washington, D.C.
- April 24-25 In Court Management Training Institute, New York, New York
- April 27-30 Fifth Circuit Conference, Orlando, Florida
- May 12-14 First Circuit Conference, Newport, Rhode Island
- May 12-14 Seventh Circuit Conference, Chicago, Illinois
- May 13-16 Conference for Circuit Judges, Washington, D.C.
- May 15-17 National Council of U.S. Magistrates, Colorado Springs, Colorado
- May 19-20 Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.

July 21 Ninth Circuit Conference, San Francisco, California

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pa.

September 18-19 Judicial Conference of the United States, Washington, D.C.

## PERSONNEL

### Appointment

Edward N. Cahn, U.S. District Judge, E.D. Pa., January 31

J. Smith Henley, of Arkansas, U.S. Circuit Judge for the Eighth Circuit, March 13

Stanley S. Brotman, of New Jersey, U.S. District Judge for the District of New Jersey, March 13

### Elevation

Thomas E. Fairchild, Chief Judge, U.S. Court of Appeals, 7th Circuit February 7

### Nomination

Anthony M. Kennedy, U.S. Circuit Judge, 9th Circuit, March 3

Dick Yin Wong, of Hawaii, U.S. District Judge for the District of Hawaii, March 17

Robert O'Connor, Jr. of Texas, U.S. District Judge for the Southern District of Texas, March 17

### Deaths

Charles D. Lawrence, Judge, U.S. Customs Court, February 12

Leon R. Yankwich, U.S. District Judge, C.D. Ca., February 9

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THE THIRD BRANCH  
VOL. 7, NO. 3 MARCH 1975

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APRIL 1975

## BILL INTRODUCED TO RAISE JUDICIAL SALARIES

Congressman Thomas F. Railsback, a ranking member of the House Judiciary Committee, April 17 introduced legislation which would raise judicial salaries by 20 percent.

Under Congressman Railsback's bill, salaries of judges of the U. S. Courts of Appeals would be increased to \$51,000 per year, those of district court judges to \$48,000 per year, and Justices of the Supreme Court to \$72,000 per year.

Earlier, Representative Joshua Eilberg introduced H.R. 2191 which provides for a 15 percent increase in judicial salaries.

Full-time Bankruptcy Judges could go to a maximum of \$41,000 yearly and part-time Bankruptcy Judges to \$21,000 per year.

Salaries of full-time magistrates could also go to \$41,000 yearly, and those of part-time magistrates to \$21,000 yearly. Trial judges (Commissioners) of the Court of Claims would receive \$41,000 per year while judges of both the Court of Customs and Patent Appeals and the Court of Claims would receive \$51,000 yearly.

Note: Salaries of Bankruptcy Judges and Magistrates are subject to administrative determination of the Judicial Conference of the U.S.) Judges of the Customs Court could receive \$48,000 per year.

The Railsback bill, H.R. 6150, could also eliminate direct appeal to the Supreme Court from three-judge courts in all cases other than those involving civil rights and reapportionment.

In addition, the bill would also expand the jurisdiction of federal

magistrates to allow them to conduct evidentiary hearings and make recommendations for the disposition of applications for post-trial relief made by individuals convicted of criminal offenses and prisoner petitions challenging conditions of confinement.

Finally, the Railsback bill would protect jurors from loss of employment as a result of their service as federal jurors.

Specifically, the bill states that "no employer shall discharge or threaten to discharge, intimidate, or coerce any employee by reason of such employee's jury service, attendance, or scheduled attendance in connection with such service, in any court of the United States."

### Here are the salary increases called for by Representative Railsback's Bill:

The Chief Justice	74,500
Associate Justices	72,000
Circuit Judges	51,000
District Judges	48,000

### NEW TAX WITHHOLDING RATES EFFECTIVE MAY 1

The Internal Revenue Service has issued new percentage method withholding tables reflecting the reduced amounts of income tax to be withheld from employees' wages as required by the Tax Reduction Act of 1975 which was enacted March 29th. The tables are effective for wages paid on and after May 1, 1975.

Income tax withholding will be reduced for the remaining eight months of 1975 as a result of the reductions in income tax provided by the new law. The reductions in tax withholding result primarily from:

- An increase in the low income allowance from \$1,300 to \$1,600 for a single person (or head-of-household), and \$1,900 for a married couple filing a joint return.

- An increase in the standard deduction from 15 percent to 16 percent, with the maximum increase from \$2,000 to \$2,300 for a single person (or head-of-household), and to \$2,600 for a married couple filing a joint return.

(See NEW TAX pg. 2)



## JUDICIAL CONFERENCE APPROVES LEGISLATION CREATING JUDICIAL TENURE COUNCIL

The Judicial Conference of the U.S. at its March meeting approved "in principle" legislation which would create a council of judicial tenure to deal with allegations of mental or physical disability or serious misconduct involving federal judges.

This concept was proposed by Senator Sam Nunn of Georgia in a Bill, S.1110, which he introduced on March 7.

### JUDICIAL CONFERENCE RESOLUTION

"With respect to S.4153, 93rd Congress, which would establish a Council on Judicial Tenure in the Judicial Branch of the Government:

"(a) Subject to the suggestions expressed in subdivisions (b) through (f) (it is resolved) that the Conference endorse in principle the legislation proposed by S.4153 but not the specific provisions of the bill;

"(b) That any reference to Justices of the Supreme Court be eliminated inasmuch as sufficient means exist through the impeachment process and further that it would be inappropriate for judges of the inferior courts to pass judgment on the action of a Justice of the Supreme Court; moreover the Judicial Conference has no jurisdiction over the Supreme Court;

"(c) That neither a judge nor a Justice of the United States may be removed from office except by the impeachment process;

"(d) That following a hearing before a commission of the type proposed in S.4153, following review by the Judicial Conference of the United States and further review by the Supreme Court of the United States, mandatory or involuntary retirement of a judge for physical or mental disability (including habitual intemperance) may be ordered, with the judge so charged relieved of his judicial duties:

"(e) That a judge similarly may be mandatorily (or involuntarily) retired for serious misconduct and he may be relieved of any further judicial duties; and

"(f) That the censure of a judge following a hearing before such a commission with review and appeal may be imposed as a less severe sentence than mandatory or involuntary retirement." ■■

### S. 1110 (NUNN BILL)

"A Justice or judge of the United States may be removed from office or censured in accordance with the procedures established under this chapter upon a finding by the Judicial Conference of the United States that the conduct of such Justice or judge is or has been inconsistent with the good behavior required by Article III Section 1 of the Constitution."

"Whenever any Justice or judge of the United States appointed to hold office during good behavior who is eligible to retire under this section does not do so and a majority of the Judicial Conference of the United States finds, subject to the requirements of Section 379 of this Title, that such Justice or judge is unable to discharge efficiently one or more of the critical duties of his office by reason of a permanent mental or physical disability, the Conference shall certify the disability of such Justice or judge and issue an order removing such Justice or judge from active service. Habitual intemperance that seriously interferes with the performance of any one of the critical duties of a Justice or judge shall be deemed to be a permanent disability for the purposes of this subsection. Such Justice or judge shall then be involuntarily retired from regular active service and the Conference shall send notice of its action to the President.

"(c) The President shall, by and with the advice and consent of the Senate, appoint a successor to any Justice or judge retired involuntarily under the provisions of subsection (b) of this section. Whenever such successor shall have been appointed, the vacancy subsequently caused by the death or resignation of the Justice or judge involuntarily retired shall not be filled." ■■

## CA-10 ISSUES NEW RULES ON UNPUBLISHED OPINIONS

Chief Judge David T. Lewis (CA-10) has advised *The Third Branch* of his Circuit's new Local Rule which permits citing unpublished opinions.

Rule 17(c) states in part, "... unpublished opinions, although unreported and not uniformly available to all of the parties, can nevertheless be cited, if relevant, in proceedings before this or any other court. Counsel citing same shall serve a copy of the unpublished opinion upon opposing counsel."

Rule 17(f) states: "When an opinion has been previously published by a District Court, an administrative agency or the Tax Court, this Court's opinions, memoranda, or order disposing of the appeal or petition shall be designated for publication. If a majority of a panel has written a disposition in such a case which would not ordinarily be published, a separate page shall be added to the disposition designating for publication only the dispositive judgment or order of the court." ■■

(NEW TAX from pg. 1)

- A new tax credit of \$30 for the taxpayer, his or her spouse, and each dependent.

- A new earned income tax credit with a maximum credit of \$400, which phases out completely when income reaches \$8,000.

The Internal Revenue Service said three categories of employees in particular, should check the withholding under the new table. If necessary, a new Form W-4 "Employees Withholding Allowance Certificate," should be filed with your payroll certifying officer.

The first category includes a great majority of taxpayers who have been overwithheld in the past. This occurs most frequently in situations in which there is one wage earner and the taxpayer is not claiming all the withholding allowances to which he or she is entitled or has four or more exemption






Pictured above are, left to right, Commission member Emanuel Celler, Chairman Roman L. Hruska and Judge Roger Robb (CA-DC). The Commission on Revision of the Federal Court Appellate System held hearings this month on its proposals to create a new National Court of Appeals and limiting some appellate procedures such as oral argument and opinion writing.

These taxpayers will continue to be overwithheld under the new tables, and should consider filing a new Form W-4, claiming additional withholding allowances.

The second category is married couples, when both spouses are employed. The withholding tables give each spouse the greater of the low income allowance or the percentage standard deduction. This may cause them to be underwithheld because, on a joint tax return, the couple is entitled to only one low income allowance or percentage standard deduction.

The third group which should review its withholding includes employees who now claim additional withholding allowances due to large itemized deductions. Under the new withholding rules, some of these employees may no longer be entitled to as many withholding allowances for large itemized deductions as they are now claiming.

A new table will appear on the new Form W-4 to enable employees to determine the number of withholding allowances for large itemized deductions to which they are now entitled. New Forms W-4 should be available from your payroll certifying officer the last week of April.

To compute the amount of income tax to be withheld, multiply the sum of \$62.50 (if paid monthly) or \$28.80 (if paid biweekly) by the number of allowances claimed on Form W-4, subtract that sum from the gross wages and determine the amount to be withheld from the appropriate payroll period table. 

## LAWYER PAYS COSTS FOR FAILURE TO APPEAR


U.S. District Judge Herbert H. Stern, concerned about what he considered a brazen transgression against his Court, issued an Order to Show Cause why a New Jersey lawyer should not be held in contempt of court when he failed to appear for trial in a million dollar personal injury case he had filed on behalf of a client. The same lawyer had previously failed to appear in the same case at a pretrial conference before a U.S. Magistrate.

At the hearing on the Show Cause Order the Judge agreed to dismiss the charge when counsel agreed to pay the costs incurred to call 21 prospective jurors, their transportation to the court at ten cents a mile, and \$150 incurred by opposing counsel. Counsel for the plaintiff explained later it was the result of a mixup in his office.

Also criticized by Judge Stern was the ultimate appearance of an associate of the lawyer who was woefully unprepared. Another New Jersey attorney, appointed by the Court as a special prosecutor to investigate the case, asked to be relieved of the appointment.

## JUDGE MURRAH HONORED BY CIRCUIT EXECUTIVES

The Circuit Executives paid former Federal Judicial Center Director Alfred P. Murrah a unique honor recently by passing a resolution expressing "their greatest admiration and deepest appreciation for his wise and understanding guidance in making the Office of the Circuit Executive, in the United States Courts of Appeals, a functioning reality and a fulfilling and rewarding experience for all of us."

The Circuit Executives' resolution said that "as the Director of the Federal Judicial Center, Judge Murrah was a moving force behind the enactment of the Circuit Executive Act, and in his Chairmanship of the Circuit Executive Certification Board was an important influence in the certification of each Circuit Executive". 

## The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



## NATION'S PRESS SUPPORTS F

In the past year, the plight of the federal judiciary has received attention in the nation's press. There has been extraordinary editorial support for an immediate and substantial increase in the salaries of all federal judges. This is especially significant in light of the present economic situation. The newspapers object to protracted inequity and are concerned about preserving a strong judiciary. The 42 per cent inflation since the previous salary increase in 1969 has precipitated an unprecedented number of resignations for salary reasons. The newspapers think that higher pay for federal judges is a small price to pay to insure the continued excellence of the federal bench.

Editorials supporting a pay increase have come from an impressive array of newspapers, as varied in political outlook as they are in geographic location. Fifty-one (51) newspapers in twenty-six (26) states and the District of Columbia have published favorable editorials, including many with major national circulation and readership such as the *New York Times*, the *Washington Post*, the *Chicago Tribune*, the *Wall Street Journal*, and the *Los Angeles Times*, as well as regional papers with intermediate circulations from diverse states such as Alabama, Arizona, Colorado, Indiana, Nebraska, New Mexico, Tennessee and Texas. The total circulation of all fifty-one (51) newspapers is nearly 15 million with an estimated readership of about 50 million.

Nationally syndicated articles, including ones by Evans and Novak, Linda Mathews, Richard Spong and Robert S. Allen, focusing on the pressing need for congressional approval of higher salary levels, have also appeared in other newspapers throughout the nation. The Evans and Novak article, for instance, was published in about 25 newspapers. Further discussion of the salary question has appeared recently in the national news magazines, *Time*, *U.S. News and World Report* and *Newsweek*.

Recent favorable editorials from many other newspapers in response to the recent Report on the State of the Judiciary by the Chief Justice have not yet been gathered and incorporated in this compilation. Nevertheless, the assembled brigade of editorial copies and excerpts indicates that a pay raise for federal judges is strongly supported by a wide spectrum of the nation's press.

### JUDICIAL SALARIES: EDITORIAL COMMENT

"Congress . . . must give top priority to the salary question. Its refusal to increase the salaries of high-level government officials since 1969 is now beginning to cripple the judiciary. . . . A continuation of the present situation is going to force more judges, particularly younger ones, off the bench and make it increasingly difficult to find first rate replacements."

WASHINGTON POST (Jan. 1, 1975)

"We favor a cut, rather than further increase, in total government spending. But one of the dangers in the government's trying to use its budget to reform society is that truly essential government services may be starved. The Judicial Branch, dependent on the other two branches for its budget, is particularly vulnerable and particularly deserving of protection."

WALL STREET JOURNAL (Jan. 31, 1975)

"The Constitution specifically prohibits Congress from lowering the salaries of judges while they are in office; inaction, however, accomplishes precisely that result and in so doing violates the spirit if not the letter of the Constitution."

ALABAMA JOURNAL (Dec. 24, 1974)

"The raise was justified. It should be reconsidered and acted upon favorably. The nation cannot expect to attract and hold the best qualified men for the federal judiciary if they are not adequately compensated."

ST. LOUIS GLOBE-DEMOCRAT (Dec. 25, 1974)

"The federal judiciary certainly stands in need of more adequate compensation if competent judges are to be retained."

MIAMI HERALD (Feb. 13, 1974)

"The country wants its best lawyers on the bench, not those who would be willing to work for a substandard salary. Congress should realize this and as soon as possible to raise the judicial pay scale."

OMAHA WORLD-HERALD (Mar. 20, 1974)

" . . . without sufficient financial incentive to keep good judges and attract qualified people to the federal bench, the quality of justice will ultimately suffer."

HOUSTON POST (Jan. 8, 1975)

"If the average salaried American in private enterprise had not received a raise through these five years of high inflation he would be screaming bloody murder."

SAN FRANCISCO EXAMINER (Dec. 16, 1974)

" . . . the federal judges' pay lag obviously has become a serious concern. In the nation's interest, as well as the judges, the inequity ought to be eliminated—and without undue delay."

NORFOLK LEDGER-STAR (Jan. 13, 1975)

"Lawyers of high ability have traditionally made substantial financial sacrifices to serve on the Federal bench. But the combination of soaring inflation and Congressional inaction—even to take care of increases in the cost of living—has imposed a double sacrifice on those upon whom the country depends so heavily for the quality of justice. . . . The need for Congressional action is urgent."

(June 15, 1974)

"The injustice of Federal judicial pay scales is obvious when measured against the salaries of other Federal employees. . . . Federal judgeships are for life, fairness, as well as maintenance of quality, demands that they receive equitable compensation."

NEW YORK TIMES (Dec. 31, 1974)



# L JUDGES' SALARY INCREASE

Congress has held back increases for the judges with unconscionable shortsightedness—unfairly and improperly linking proposed raises for Congressional and judicial salaries. Each should be decided on its merits; and the judges should come first."

NEW YORK TIMES (Feb. 6, 1975)

Letting experienced jurists get away and failing to attract outstanding lawyers to the bench (due to low salaries) is extremely short-sighted public policy. Eventually it will have a detrimental impact on the quality of the justice in this country."

KANSAS CITY STAR (Dec. 9, 1974)

... Chief Justice Burger has called attention to a problem which Congress can continue to ignore only at great peril to the quality of justice in the federal courts—judicial salaries. ... how many more resignations will it take before Congress moves to save the federal bench from wholesale depletion of first-rate judges?"

PHILADELPHIA INQUIRER (Jan. 2, 1975)

If the federal judicial system is to be saved from severe and lasting damage, Congress must act quickly to raise the pay of federal judges."

PHOENIX GAZETTE (Jan. 15, 1975)

In these times we would like to see the government hold the line on expenses but there are exceptions and one is the case of the federal judges. ... We need good judges as seldom before and we're not going to be able to recruit them for the federal bench under the present pay scale."

ATLANTA JOURNAL/CONSTITUTION (Jan. 19, 1975)

By rights, federal judges should receive salary hikes of about 50 percent."

EL PASO TIMES (Dec. 23, 1973)

More money for judges is clearly in order. The alternative—a federal bench of gradually declining competence—would be infinitely more costly."

(June 11, 1974)

Congress will not find it politically popular to raise judicial salaries in the midst of recession and rising unemployment. But the alternative is a certain decline in the quality of justice in the federal courts. In the end ... that could prove to be far more costly."

LOS ANGELES TIMES (Jan. 1, 1975)

Clearly, Senate refusal to permit any judicial salary increases since 1969 is out of step, and jeopardizes the quality of justice being demanded by the people. ... Various pay proposals have been advanced. But one which seems fair is a \$10,000 increase which would promptly overcome the ravages of inflation for the past five years, and make federal judgeships more inviting for qualified appointees."

ARIZONA REPUBLIC (Jan. 12, 1975)

The Congressional parsimony is as unrealistic as it is unfair, particularly in light of the sharp rise in the cost of living in recent years; and not all judges have been able to grin and bear it."

PHILADELPHIA EVENING BULLETIN (Jan. 15, 1975)

... a case can be made for the increases, especially those for judges and civil service officials. If the raises are rejected, there will not be another chance for them until 1977, meaning that all those concerned would be without a raise for eight years. Few wage earners can claim to have suffered that indignity. ... it would be a shame if the legitimate needs of the judiciary and the executive were sacrificed because of the lawmakers' political fears."

CHICAGO TRIBUNE (Feb. 11, 1974)

Federal judges are seeking a pay increase, and the Chronicle believes an adjustment is in order. ... We should economize on government at every level; at the same time, we need to be realistic. When the pay a judge receives is not enough to attract highly qualified individuals, it is the public that will be the loser."

HOUSTON CHRONICLE (Jan. 12, 1975)

All persons interested in the federal courts and the quality of justice they dispense should be aware of the urgent need for public support for federal judicial salary increases."

JUDICATURE (Dec., 1973)

Burger makes a valid point about judicial pay, which has been frozen at \$40,000 for nearly six years—despite the soaring cost of living and six salary increases for other federal employees."

MILWAUKEE JOURNAL (Jan. 6, 1975)

We think that opponents of pay hikes for U.S. judges are wrong. ... Federal judges have not had a pay raise in five years, a period when other federal employees have received pay raises averaging 38 percent, and the cost of living has risen 42 percent."

CLEVELAND PRESS (Jan. 8, 1975)

Judges, like other top officeholders in the federal government, have not received salary increases since 1969. That is simply not fair, and it is beginning to take a toll in the quality of the federal judiciary."

WASHINGTON POST (Feb. 27, 1975)

Congress ... ought to consider swiftly the Chief Justice's modest requests for the wherewithal to run a competent federal court system."

CHRISTIAN SCIENCE MONITOR (Feb. 26, 1975)

However, the question of quality of the Federal judiciary itself must be addressed immediately by the Congress. The problem is twofold. There are not enough Federal judges and those already on the bench are underpaid."

NEW YORK TIMES (Mar. 3, 1975)

Our attitude toward increasing government spending and expanding public payrolls is a matter of record. We favor cuts, rather than increases, in government spending and hiring. But it is quite clear from the record that the federal judiciary has been left under-manned and under-paid."

BOSTON HERALD/AMERICAN (Feb. 14, 1975)

Congress ought to set legislation in motion without delay to increase both the salary and the number of federal judges."

WASHINGTON STAR (Feb. 28, 1975)

Enactment of laws is going to find itself with some bad law if the situation that exists today becomes more acute."

MIAMI HERALD (Feb. 26, 1975)

The federal judiciary is past due for a sizeable pay raise, and the 94th Congress should grant the raise as a priority."

SAN ANTONIO LIGHT (Jan. 6, 1975)



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## PLAN TO BAR INCOMPETENT LAWYERS FOUND TO GAIN SUPPORT

By WARREN WEAVER Jr.  
Special to The New York Times

ACAPULCO, Mexico, March 10—Chief Justice Warren E. Burger's campaign to bar incompetent lawyers from practicing in Federal courts appeared today to be winning growing, if not overwhelming, support from some of the most experienced and successful trial lawyers in the nation.

The goal would be achieved in part through the adoption by the Federal courts of a set of minimum requirements for education and experience that any lawyer must meet before he can represent a client there. Officials of the American College of Trial Lawyers reported today that the idea was making slow but steady progress.

Spearheading a parallel local movement to improve the quality of courtroom representation is Chief Judge Irving R. Kaufman of the United States Court of Appeals for the Second Circuit, who told the spring meeting of the trial lawyers' group today that the bar was not doing enough to weed out its incompetent members.

A survey of the Southern District of New York made at Judge Kaufman's direction revealed that 20 to 25 per cent of the lawyers appearing in court were regarded as incompetent by the Federal judges before whom they appeared, another speaker reported.

### 'Minimal' Rules Sought

Robert L. Clare Jr., a New York City lawyer who conducted the survey, said that his com-

mittee was recommending that "extremely minimal" rules be adopted for qualifying trial lawyers in the Second Circuit, which is made up of New York, Connecticut and Vermont.

Marcus Mattson of Los Angeles, who is heading the national study of the same problem for the College of Trial Lawyers, said that he expected a model set of rules, subject to separate adoption by each Federal district court and appeals court in the country to be ready in less than a year. He indicated they would be similar, if not identical to the Second Circuit code.

Generally, lawyers tend to resist any criticism of judges regarding their courtroom competency, but the American College is a relatively small (2,500) selective organization of experienced practitioners (no less than 15 years), who would presumably have little to fear from the imposition of such standards.

The rules proposed for the Second Circuit by Mr. Clare and his committee would require any lawyer appearing in Federal court on his own to have done the following:

¶ Passed courses in procedure, evidence, professional responsibility, ethics, criminal law and trial advocacy, either in law school or afterward.

¶ Participated as an associate trial counsel in four cases or been an observer of six.

Mr. Clare told the trial lawyers' meeting, held in the Acapulco Princess Hotel here, of a senior New York trial lawyer who spent a week observing a court in session before he was scheduled to try his case there.

"That's the kind of responsi-

bility we need," he declared. "If we can't instill it, we should enforce it."

### Origin in Fordham Speech

In November, 1973, Chief Justice Burger touched off this controversy with a speech at the Fordham Law School, criticizing the capability of some trial lawyers and suggesting that all of them be required to meet a separate set of standards beyond those for general practitioners.

Justice Burger was to have participated in today's discussion of "The Quality of Advocacy," but he sent [word that he] could not leave Washington because "his workload simply caught up with him."

Both Judge Kaufman and Mr. Clare described the heated opposition of law schools to the proposed qualification system. The judge acknowledged that it would raise their costs somewhat, but he noted that Yale Law School spent \$2.2-million a year on 600 students while Yale Medical School spent \$2.3-million on 400 students.

The rules prepared by the Clare committee for the Second Circuit are being circulated among judges, lawyers, and bar associations for comment. Judge Kaufman said after his speech that his court might adopt them before the district courts within the circuit did.

At the opening session of its three-day meeting, the trial lawyers' group paid tribute to Emil Gumpert of Los Angeles, who founded the organization 25 years ago. The college announced the establishment of an annual \$5,000 award in his name to the law school or other institution offering the best course in advocacy.

## CORRESPONDENCE COURSES GAIN WIDE ACCEPTANCE

The FJC has launched a low-cost, wide-coverage approach to educating supporting personnel in supervisory positions. It is a correspondence course entitled *Supervision* and is directed to supervising personnel who have either been unable to attend formal resident courses sponsored by the Federal Judicial Center or who have attended these seminars in the past and desire further training in this area.

The course consists of three lessons: I-Supervisor Duties and

Responsibilities; II-Communications; and III-Human Relations.

The participant can proceed at his own pace and, at the completion of three lessons, a certificate is awarded. Appropriate records will be maintained in the Personnel Branch of the Administrative Office of the U.S. Courts.

The Division is preparing correspondence courses covering other subjects. To enroll write the Director of Continuing Education and Training at the Center.



## BIRMINGHAM EXEMPTS SENIOR JUDGES FROM CITY TAXES

The Administrative Office of the United States Courts has received a copy of a letter from the City Attorney, Birmingham, concerning the taxability of a federal judge's pay received after taking senior status. The relevant portion of the letter, which may be of interest to other retired judges, and may be of precedential value, reads as follows:

"It is apparent to me that the word *salary*...is in fact synonymous with the word *pension* in the sense in which it is used in Title 28 USC Section 371(b). The remuneration is due to be paid whether a judge renders services to the United States or does *not* render such services. His remuneration is not increased by the rendition of services and therefore it must be said that the remuneration is for retirement benefits and not taxable under the Birmingham Occupational License (Payroll) Tax." ■■

## COMMUNITY RELATIONS HANDBOOK PUBLISHED

The Division of Continuing Education and Training has published a *Guide to Community Relations for United States Probation Officers*. This reference manual describes the techniques of public relations involving such problems as participating in radio and television programs, conducting press conferences, giving talks on probation and parole, and fielding information requests from reporters.

Although this guide was produced primarily to aid the Probation Officer in improving his skills in community relations, it contains many helpful ideas and suggestions that could be employed by anyone who needs to deal with the press in their professional endeavors.

The basic material in this manual was prepared by the Federal Probation Officers Association. Anyone who is interested in obtaining a copy of this guide should write directly to the Federal Judicial Center Information Service. ■■

## ADVISORY COUNCIL ON APPELLATE JUSTICE HOLDS WIND-UP SESSION

Over three years ago a group of concerned judges, lawyers, and law professors, aware of growing problems in the appellate courts, met to seek solutions to these problems.

With the cooperation of the National Center for State Courts and the Federal Judicial Center, this group expanded and formed the Advisory Council on Appellate Justice. Over thirty knowledgeable judges, lawyers and law professors were invited to join the Council and for the next three years every facet of the work of processing appellate cases was considered. The Council, according to schedule, concluded their deliberations with a 250-member conference last January during which the conferees reviewed the work of the Council. The Council will publish summaries of the workshop discussions later.

A final meeting of the Council was held at the Federal Judicial Center this month to decide on specific recommendations which will be published later.

The Chief Justice commended their efforts, "often done at a great personal sacrifice" and said their work would undoubtedly inure to the good of the appellate courts, "perhaps even sooner than they might believe." ■■

## LEGISLATION

**S. 237**, to provide in civil cases for six-member juries, has been introduced by Senator Burdick. Hearings are currently planned for the Fall of 1975.

**S. 539**, to increase jury fees and provide for protection of jurors' employment has also been introduced by Senator Burdick. This bill does not follow completely the Judicial Conference proposal but will constitute a vehicle for discussion by the Senate.

**S. 286 and S. 287**, introduced by Senator Burdick, would provide for 29 additional District and 10 additional Circuit Judgeships. The Judicial Conference had requested 52 district judgeships and 11 Circuit judgeships.

**H.R. 4421 and H.R. 4422**, introduced by Congressman Hutchinson in the House, incorporates all of the judgeships requested by the Judicial Conference.

**S. 1130**, relating to service of a chief judge has been introduced by Senator Garn of Utah.

**S. 1**, the bill to codify all federal criminal laws was the subject of hearings April 17 and 18.

**Revision of Circuits:** Hearings have been held on S. 729, the bill introduced by Senator Burdick which would provide for two divisions in both the 5th and 9th Circuits.

**Parole Legislation:** A brief hearing was held early in April on S. 1109, and it is expected that the bill will be reported out in the very near future. In the House, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, has held a number of markup sessions on the parole bill, H.R. 5727, pending there and has approved it for full Committee action.

**Environmental Legislation:** S. 776, which would allow the Environmental Protection Agency to regulate chemical substances contains authority to allow the courts to grant relief from health risks whether or not demonstrable harm to health has been established. This bill was introduced by Senator Tunney and has been the subject of hearings. Early action is expected on this legislation.

**H.R. 5951**, to amend the Civil Service Retirement law to increase the retirement benefits of referees in bankruptcy introduced by Cong. Henderson; referred to the Committee on Post Office and Civil Service.  
(See LEGISLATION pg. 8)



# aoa fjc calendar

- May 9-10 Advisory Committee on Appellate Rules, Washington, D.C.
- May 12-14 Seventh Circuit Conference, Chicago, Illinois
- May 12-14 First Circuit Conference, Newport, Rhode Island
- May 13-16 Conference for Circuit Judges, Washington, D.C.
- May 15-17 National Council of U. S. Magistrates, Colorado Springs, Colorado
- May 19 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, D.C.
- May 19-20 Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.
- May 22-24 Judicial Conference Committee on Criminal Law, Denver, Colorado
- June 1-3 D. C. Circuit Conference, Williamsburg, Virginia
- June 20 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.
- June 25-28 Fourth Circuit Conference, Hot Springs, Virginia
- June 25-28 Eighth Circuit Conference, Fargo, North Dakota
- June 30- July 1 Judicial Conference Subcommittee on Judicial Improvements, Jackson Lake, Wyoming

July 22-24 Ninth Circuit Judicial Conference, San Francisco, California

September 9 Third Circuit Judicial Conference, Philadelphia, Pennsylvania

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pennsylvania

September 18-19 Judicial Conference of the United States, Washington, D.C.

## PERSONNEL

### Appointments

James M. Fitzgerald, U.S. District Judge, D. Alaska, March 3

J. Smith Henley, U. S. Circuit Judge, 8th Cir., March 24

### Elevations

Garnett Thomas Eisele, Chief Judge, U.S. District Court, E.D. Ark., March 24

James B. Parsons, Chief Judge, U.S. District Court, N.D. Ill., April 16

### Confirmations

Anthony M. Kennedy, U.S. Circuit Judge, 9th Cir., March 20

Thomas J. Meskill, U.S. Circuit Judge 2nd. Cir., April 22

Dick Yim Wong, U.S. District Judge, D. Hawaii, April 24

Robert O'Connor, Jr., U.S. District Judge, S.D. Texas, April 24

### Nomination

William H. Stafford, Jr., U.S. District Judge N.D. Fla., April 18

### Death

Walter M. Bastian, U.S. Senior Circuit Judge, D.C. Cir., March 12

LEGISLATION from pg.6

**Federal Rules of Criminal Procedure:** The Criminal Justice Subcommittee of the House Judiciary Committee has held hearings and mark-up sessions on the proposed amendments to the Federal Rules of Criminal Procedure. No bill has yet been introduced incorporating any of the revisions but this is anticipated in the near future.

**Consumer Legislation:** S. 200 to establish an individual agency to represent the interests of consumers in federal agency and court proceedings was introduced by Senator Ribicoff. The bill has been reported out and it is anticipated that it will clear both Houses this session.

**Per Diem:** H.R. 4834 is the latest bill which has been reported out by the Subcommittee on Legislation and National Security of the House Government Operations Committee. It is expected to go to the floor shortly. This bill, as reported, contains a provision that would limit any federal officer or employee to reimbursement for mileage at the rate established by GSA for operating a government vehicle, whenever he chooses to use a private vehicle. In the Senate, S. 172 introduced by Senator Metcalf passed March 24th. Again a problem area is the inclusion of Senate staff members under the per diem expense provisions. ■

THE THIRD BRANCH  
VOL. 7, NO. 4 APRIL 1975

THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

VOL. 7, NO. 5

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MAY 1975

### SUPREME COURT HISTORICAL SOCIETY FORMED

The Supreme Court Historical Society, complementing similar groups for the White House and the United States Capitol, has been formed after one and a half years of planning by a committee established by Chief Justice Warren E. Burger. The organization was formally incorporated as a non-profit educational entity under District of Columbia law in November, 1974.

(See SOCIETY pg. 2)



Pictured above: Judge Ruggero J. Aldisert (left) and former Secretary of State Dean Rusk prior to Mr. Rusk's presentation at Circuit Judges' Conference. Professor Rusk is currently teaching international law at the University of Georgia.



(left to right) Mrs. Warren E. Burger, William T. Gossett, The Chief Justice, and Mrs. William T. Gossett pictured at the Supreme Court reception which was held immediately prior to the first meeting of the Board of Directors and Advisory Council of the Supreme Court Historical Society.

### FJC PUBLISHES EVIDENCE GUIDEBOOK

The Federal Judicial Center has compiled a guidebook to assist judges and other federal officials in implementing the new federal evidence rules.

The compilation was prepared at the request of the Standing Committee on Rules of Practice and Procedure of the Judicial Conference of the United States.

Professor Edward W. Cleary, who was the Reporter to the Advisory Committee on Rules of Evidence, prepared the compilation, and it has been reviewed by Judge Albert B. Maris, the former Chairman of the Standing Committee, Judge Roszel C. Thomsen, the present Chairman of the Standing Committee, Judge Charles W. Joiner, who was a member of the Advisory Committee and is now a member of the Standing Committee, and Richard M. Mischke, a staff member.

Presently, the guidebook has been submitted to over a dozen legal publishers who have indicated interest in printing.

The rules stem from action of the late Chief Justice Earl Warren who in March 1965 appointed an Advisory Committee to formulate rules of evidence for the federal courts. On November 20, 1972, the Supreme Court prescribed Federal Rules of Evidence to be effective on July 1, 1973 and Chief Justice Warren E. Burger transmitted the Rules to the Congress on February 5, 1973. The Rules will become effective July 1, 1975.

(See GUIDE pg. 3)

LIBRARY U. OF CALIF. LIBRARY



(SOCIETY from pg. 1)

The Honorable Tom C. Clark, Associate Justice of the Supreme Court (ret.), is serving as interim chairman of the Board of Trustees of the new Society. The chairman of the Advisory Board is Professor William F. Swindler, who served as chairman of the Chief Justice's committee which prepared the way for the formation of the Society. Professor Swindler is John Marshall Professor of Law at the College of William and Mary and author of a number of studies on the Court. Membership of the Advisory Board will be announced in the near future.

The Incorporators of the Society, Alice O'Donnell of the Federal Judicial Center; Rowland F. Kirks, Director of the Administrative Office of the United States Courts; and Earl W. Kintner, District of Columbia attorney and former Chairman of the Federal Trade Commission, have chosen William H. Press as the Executive Director.

Mr. Press, a native Washingtonian, has been widely identified with D.C. governmental and legislative affairs for many years, and is actively involved in business, educational and historical circles. Since being selected to direct the Society's development and operations, he has been completing its organization, perfecting its by-laws and operating objectives, and outlining the formation and mission of committees for work on historical research, acquisitions, publications and membership (which will be open to lawyers, students, academicians and the general public).

The Supreme Court Historical Society will:

1. Disseminate knowledge of and provide opportunity for research into such historic, scientific, literary and other documents, records, objects, memorabilia of or relating to the Supreme Court of the United States and the Justices thereof and any other miscellaneous data as are pertinent to in-

creased public knowledge of the Supreme Court and its place in American history;

2. Acquire knowledge concerning the history of the entire Judicial Branch of the United States Government;

3. Make the knowledge and materials acquired available to scholars, historians, and the public under conditions prescribed from time to time by the Board of Trustees;

4. Acquire through gift or loan, or on occasion through purchase, when and as funds for such purpose become available, documents, objects of historical significance, or articles of personal property or other memorabilia which may be related to the Society's purposes, or incorporated into continuing displays within the United States Supreme Court building or elsewhere, in order to portray to visitors to the premises the persons and events associated with the Supreme Court of the United States in the course of history;

5. Assist in effectuating the national policy for preserving all documents, records, objects and memorabilia which are of national significance for the inspiration and benefit of the people of the United States, more especially as those materials affect the development, functions, personnel, buildings and history of the Supreme Court and of the federal judiciary in general and as such preservation may be accomplished through specified activities such as the installation and presentation of educational exhibits, documentation, registration, storage and when necessary through acceptance of gifts of services and materials for the preservation, conservation, maintenance and security of any articles or data acquired for such exhibits;

6. Acquire by purchase and accept gifts, royalties or bequests of money, securities and other property, personal or real; purchase or otherwise acquire, own, use, improve, hold and operate for in-

vestment or develop, mortgage, sell, convey, lease, donate or otherwise dispose of, or deal in, improved or unimproved real estate wherever situated.

Miss Catherine C. Hetos, an employee of the Supreme Court with a curatorial background, has been organizing exhibits on the Court's history and developing a systematic plan for receiving and cataloging materials already in the possession of the Court or offered to it by persons learning of the project. Her displays have featured a pictorial description of the construction of the present court building, and an exhibition on the Court under Chief Justice John Marshall. A display on the late Chief Justice Earl Warren is timed to coincide with the Court's traditional commemorative service May 22. There are plans for an exhibit on the pre-history of the federal judiciary, in the quasi-judicial activities of the Continental Congress either later in the year or to open the bicentennial year 1976.

A program of publication, supplementing the acquisitions and exhibits in the Court itself, is scheduled for early inauguration.

Chief Justice Warren E. Burger has observed that the new Historical Society has made a timely appearance, on the eve of the national bicentennial. Much of its work will be coordinated with the anniversary activities being developed by other historical agencies and with the judiciary's own program for bicentennial observance.

The first membership mailing will go to some 35,000 addressees about June 1 inviting them to submit applications for membership.

(See SOCIETY pg. 3)

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#### Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U.S. Courts



As finally enacted, they are the joint product of the Rule-Making process as evolved by the Supreme Court and the legislative process conducted by both the House and the Senate.

The purpose of the evidence guidebook is to present the rules together with interpretive material in a convenient and readily accessible form. Accordingly, each rule is followed by the Advisory Committee's Note, to the extent still pertinent, and by any relevant provisions of the Report of the House Committee on the Judiciary, the Report of the Senate Committee on the Judiciary, and the Conference Report. Extracts from the Congressional Record are included where explanatory of amendments made on the floor.



Circuit Judges pictured at luncheon break during second of two conferences for Judges of the U.S. Courts of Appeals held at the F.J.C. this year: (left to right) Ozell M. Trask (CA-9), Francis L. Van Dusen (CA-3), Thomas J. Meskill (CA-2), Wade H. McCree, Jr. (CA-6), Ruggero J. Aldisert (CA-3), Harold Leventhal (CA-DC), Spottswood W. Robinson, III (CA-DC), Professor Maurice Rosenberg (Columbia University), Joseph F. Weis, Jr. (CA-3), Edward D. Re (Customs Court), James E. Barrett (CA-10), Anthony M. Kennedy (CA-9).

This month's conference was structured much the same as the first, held last February, with some refinements which Judge Ruggero Aldisert, Conference Chairman, said were made to assure the best possible use of the high level of talent brought to the conference by the members of the planning committee and the lecturers.

## REVISION COMMISSION COMPLETES HEARINGS

(SOCIETY from pg. 2)

in any of the following categories at the dues rate shown:

Individual	\$25 per year
Associate	\$50 per year
Founder	\$100 per year
(During 1975)	
Academic (available to students only)	\$5 per year

Firms, foundations and the like wishing to provide generous support for the Society may become Patron Members and elect to pay annual dues of between \$100 and \$4999. Such firms may designate a partner or employee as Society member for each multiple of \$25 annual dues, but not to exceed 10 such members.

Life Memberships are available to those who have paid dues of \$5000 or more over a period of not exceeding 10 years. Contributors of \$50,000 or more shall be known as benefactors and those contributing \$5000 to \$49,999 shall be known as Sustaining Patrons.

Offices of the Supreme Court Historical Society are at 1629 K Street, N.W., Suite 400, Washington, D.C. 20006.

The Commission on Revision of the Federal Court Appellate System recently completed final hearings on its preliminary report, "Structure and Internal Procedures: Recommendations for Change."

These were the last of a series of hearings, during which the Commission heard from judges of all the Courts of Appeals, as well as from judges of the Court of Claims and the Court of Customs and Patent Appeals. At these most recent hearings, the Commission heard from the chief judges of nine of the federal appellate courts, as well as from other judges of the circuit and district courts.

Both at the hearings and in written submissions to the Commission, attention focused on the Commission's proposal to recommend a National Court of Appeals. The comments span the whole spectrum of possible reactions.

Many judges affirmed the need for a new national appellate tribunal and spoke in favor of the desirability and workability of the

Commission's proposal. Chief Judge Clement F. Haynsworth, Jr. (CA-4), for example, told the Commission that its proposal was "the simplest, most practical, most effective and least objectionable of all of the proposals advanced to meet the great shortage of national appellate capacity which has developed over the last few decades with all of its unfortunate consequences for the administration of justice and for the public in general."

Chief Judge David T. Lewis (CA-10) testified that "the proposed establishment of a National Court of Appeals is the most desirable yet advanced." Judge Edward A. Tamm (CA-DC) was "convinced that a new National Court of Appeals is essential if the business of the federal courts is to be conducted with dispatch, efficiency and inherent justice."

Other witnesses, although recognizing the need for a new national appellate tribunal, differed with the Commission on details of

(See COMMISSION pg. 4)



(COMMISSION from pg. 3)

the proposed court's structure and creation. Judge Harold Leventhal (CA-DC) preferred judicial assignments to Presidential appointment of the judges of the court. His statement, which has been echoed by other judges who have written to the Commission, including Judge Carl McGowan (CA-DC) and Chief Judge Wilson Cowen of the U.S. Court of Claims, suggests that the judges of the Courts of Appeals be assigned to the National Court, for several years.

Others, such as Judge Byron G. Skelton of the U.S. Court of Claims, would limit the Presidential power of appointment by requiring him to choose his appointees from active circuit judges. Finally, there are those who would rotate the membership of the court more frequently, again relying upon the concept of assignment of circuit judges to the National Court.

Several judges proposed more experimental solutions to the perceived need. Judge Shirley Hufsteler (CA-9) would create the National Court for a period of seven years with a reexamination of the court's effectiveness and jurisdiction during this period. A similar proposal was put forth by Judge Arlin M. Adams (CA-3) who suggested a reassessment after five years.

Finally, the Commission heard from judges who reject both the need for a National Court of Appeals, as well as the Commission's proposed solution. Judge Ruggero Aldisert (CA-3) explained the position of seven of the judges of the Third Circuit who felt that the Supreme Court would have greater opportunity to provide nationally authoritative decisions if the Justices could be relieved of the burden of reviewing decisions of the highest state courts. These judges recommended Article III court review of all state court decisions before a party could appeal to the Supreme Court. Chief Judge Irving Kaufman (CA-2) speaking for all the active judges of the Second Circuit, felt that "what in fact is needed is not a National Court of Appeal, but specialized

4  
appellate courts."

Chief Judge Kaufman expressed a concern that was echoed throughout the Commission's hearings both by supporters and opponents of the Commission's plan: "The diminution of authority and prestige of the courts of appeals" which would result from the imposition of another court between them and the Supreme Court.

The Commission is presently considering all of these views, as well as the opinions which have been offered by practicing members of the bar and academicians, and will file its final report on June 21, 1975.



Pictured above are two of the Regional Vice Presidents of the Federal Probation Officers Association who are among the group who met with Judge Hoffman last month. (Left to right) Thomas L. Barnes from Cincinnati, Ohio and Charles B. Mandsager from Sioux Falls, South Dakota.

#### PROBATION ASSOCIATION OFFICIALS MEET WITH FEDERAL JUDICIAL CENTER'S DIRECTOR HOFFMAN

On April 23, twelve members of the Federal Probation Officers Association Executive Board met with Judge Walter E. Hoffman, Director of the Federal Judicial Center, and Mr. Dick Mischke, Deputy Director of the Continuing Education and Training Division, to discuss future probation training to be provided by the Center.

Judge Hoffman furnished the Executive Board with policy guidance concerning his views on the future of probation training. He

felt that well-trained, currently informed Probation Officers were a definite must to keep up the desired professional image of the U.S. Probation Officers.

However, he said that if the fiscal 1976 budget is approved by Congress, adequate refresher training would be continued. Henceforth, the more descriptive term "Advanced Seminar" will be used in lieu of "Refresher Seminar." The only modification is that Advanced Seminars would be conducted on a regional basis rather than attempting to meet centrally. This regional approach was necessitated because of increased travel costs.

Other new training methods were discussed such as small in-court seminars entitled "Improving Supervisory Skills" and also correspondence courses. In addition, Judge Hoffman emphasized that, in view of increased costs for formal training, the local Chief Probation Officer should provide more extensive training in his district. A training Guide has recently been published by the Federal Judicial Center to aid local Chiefs and their training officers in planning.

#### SENATORS PROPOSE THAT CHIEF JUSTICE ADDRESS CONGRESS

Senators Birch Bayh (D-Ind.) and Edward M. Kennedy (D-Mass.), both senior members of the Senate Judiciary Committee, have introduced a resolution that Congress invites the Chief Justice to appear before a joint session of Congress to report on the State of the Judiciary.

Senator Bayh, in introducing the resolution, stated that such a Judiciary message "would initiate" a constructive dialogue between two co-equal branches of government. Recommendations could be made for improvement and priorities for future action."

Senator Kennedy, echoing Senator Bayh's remarks, said, "The time is overdue for Congress to become better informed of the problems and aspirations of the Judiciary."

(See ADDRESS pg.



## JUDICIAL FELLOWS SELECTED

The Judicial Fellows Commission, headed by Justice Tom C. Clark, has selected the third group of Judicial Fellows who will work on key projects both at the Supreme Court as well as the Administrative Office of the U.S. Courts and the Federal Judicial Center.

The two selected for the 1975/76 year are Paul R. Baier of Cincinnati, Ohio, and Jack R. Buchanan of Bethel Park, Pa.



Paul R. Baier

Paul R. Baier is an Associate Professor of Law at Louisiana State University. He received his J.D. from Harvard Law School in 1969 and subsequently clerked for Judge John H. Gillis of the Michigan Court of Appeals. Since 1970, he has served as a consultant on appellate court administration to Chief Judge T. John Lesinski of the Michigan Court of Appeals. Mr. Baier has published widely on law, courts, and the work of state appellate courts, particularly in Louisiana. His teaching interests include Administrative Law, Constitutional Law, and Criminal Procedure.

Jack R. Buchanan received his Ph.D. in computer science from Stanford University in 1972, completing his dissertation on automatic programming. From 1972 to 1975, Mr. Buchanan was Assistant Professor at the Graduate School of Industrial Administration and Computer Science Department at Carnegie-Mellon University.

Mr. Buchanan has completed numerous consulting assignments concerning computer information systems, many for private law firms. He recently assisted the



Jack R. Buchanan

Federal Judicial Center in the design and implementation of management information systems to support judicial administration. His teaching interests include business information systems, program management and computational aspects of law and legal processes, mathematical theory of computation and artificial intelligence.

## PRESIDENT SIGNS TRAVEL-PER DIEM BILL

President Ford signed S. 172, the Travel Expense Amendments Act of 1974, which substantially increases both per diem and mileage allowances for all federal employees including members of the Judicial Branch.

Under the provisions of the bill, per diem can be increased from the current \$25 up to a maximum of \$35 but the actual increase will be determined administratively by the Director of the Administrative Office of U.S. Courts. A directive has been prepared by the A.O. and is being circulated immediately to all key judicial officials.

The bill also allows up to \$50 per day for actual expenses but this is also subject to administrative determination by the A.O.

Mileage for use of privately owned automobiles may also be increased to a maximum of 20 cents per mile but the exact amount will be determined by the General Services Administration and the A.O. will promulgate guidelines concerning persons who are eligible for the increased mileage expense allowance set by the G.S.A.

(ADDRESS from pg. 4)

by bringing the prestige of the high office of the Chief Justice to the task, I believe that Congress can make a better start toward finding satisfactory answers to the difficult problems of judicial administration and court reform."

Senator Kennedy released a list of 61 persons other than Presidents who have addressed joint sessions of Congress since 1824. The list ranges from former Secretaries of State Cordell Hull and Dean Acheson to British Prime Minister Winston S. Churchill to Italian President Antonio Segni to other American citizens such as astronauts Lt. Col. John Glenn and Major Gordon L. Cooper, Jr., to poet Carl Sandburg.

The Chief Justice on several occasions has stated that there is a need for more effective communication between the Congress and the Judicial Branch. The Chief Justice has said that if such an appearance before Congress is arranged, it should be followed by a "working" session with a joint meeting of the Judiciary Committee of both Houses where details and programs could be explored in depth.

## HEARINGS SET ON JUDICIAL PAY INCREASE LEGISLATION

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice has scheduled hearings June 20 and 23 on legislation which would raise judicial salaries by 20 percent.

A spokesman for the Subcommittee whose Chairman is Representative Robert W. Kastenmeier said the Subcommittee's hearings will focus both on the bill introduced by Congressman Thomas F. Railsback, H.R. 6150, April 17 calling for a 20 percent increase as well as an earlier bill calling for a 15 percent increase, H.R. 2191, introduced by Congressman Joshua Eilberg. (See *The Third Branch*, April, 1975.)



# WHAT DO FEDERAL JUDGES THINK ABOUT LIMITING ORAL ARGUMENT AND OPINION-WRITING?

The Research Division of the Federal Judicial Center, acting at the direction of the Center's Board, surveyed the federal judiciary recently to determine their attitudes toward a variety of appellate practices.

These practices were either in operation in some U.S. Courts of Appeals, under review by other federal appellate courts or being studied by the Commission on Revision of the Federal Court Appellate System.

The report is designed to complement a similar study of attorney attitudes, conducted in three circuits toward appellate procedures, prepared for the Revision Commission by the Bureau of Social Science Research in conjunction with FJC's Research Division. (The accompanying table describes in detail the responses of the judges to some of the survey questions.)

The survey provided a valuable perspective on issues now confronting the federal judiciary as well as the Revision Commission.

In general, judges are more satisfied with current practices truncating court procedures than appellate attorneys. But although judges may find these practices more acceptable than the bar, that acceptance varies according to circumstance.

Not every case is a candidate for truncated procedures nor should the procedural device be the same in every case, the Federal Judicial Center research report concluded.

In summary, while there is agreement, it is qualified by the facts of a case, by the extent of delay (if any), and by the advantages to be gained through the use of procedural shortcuts.

A majority of both judges and lawyers agree on many matters relating to the proper use of practices limiting oral argument or curtailing written opinions. Ideally, both judges and lawyers would generally agree to retain such practices with-

## ACCEPTABILITY TO UNITED STATES JUDGES OF PRACTICES LIMITING ORAL ARGUMENT AND OPINION WRITING

(Data shown are the proportion of judges who consider each practice listed ever acceptable)

Practice	Circuit Judges	District Judges	All Judges*
Limitation of oral argument to 15-20 minutes for each side	100%	99%	99%
Denial of oral argument.	88	94	92
Affirmance in a two-page memorandum of decision not to be cited or published	96	92	93
Affirmance from the bench at the close of oral argument without further written explanation, but with a recorded oral statement of reasons given by the panel.	78	83	81
Reversal in a two-page memorandum of decision not to be cited or published	85	76	78
Affirmance in a one-line judgment order.	85	78	79
Affirmance from the bench at the close of oral argument without further written explanation.	63	64	64
Reversal in a one-line judgment order.	53	42	45
Reversal from the bench at the close of oral argument without further written explanation.	34	29	30

\* Includes judges of the Customs Court, the Court of Claims, and the Court of Customs and Patent Appeals.

out limitations, but when faced with the reality of swelling appellate dockets, judges and lawyers disagree as to the proposed cure.

Judges are more responsive than lawyers to the prospect of delay. While they list their reasons in the same order as lawyers, with the avoidance of delay at the bottom of the list, the need to avoid delay still is viewed by the federal bench as a stronger reason for curtailing procedures than it is by the bar.

Substantial majorities of both appellate and district judges view the current criteria for limiting oral argument and opinion-writing as acceptable while only about a third of the attorneys concur.

The lawyers' survey when viewed against the results of the judges'

survey, may suggest a remedy for the differential support for new appellate practices from bench and bar. Lawyers more frequently accept appellate procedures—including their truncation—in circuits where these procedures are in use.

As a rule, however, proportionately more judges than lawyers are accepting the new appellate procedures.

This may be because judges are more familiar than attorneys with the problems that have led to departures from traditional appellate practices. Judges may also be more familiar with the application of known procedures.



# LEGISLATION

**Federal Rules of Criminal Procedure.** The proposed amendments to the Federal Rules of Criminal Procedure which have been under the consideration of the Subcommittee on Criminal Justice of the House Judiciary Committee were favorably reported to the full Committee as H.R. 6799, which was introduced on May 7, 1975. The full Judiciary Committee has held one meeting on May 13, 1975 but did not complete action on the bill and a further meeting will be held on May 20, 1975.

**Parole Reorganization Act of 1975.** The House Judiciary Committee has favorably reported H.R. 5727, the Parole Reorganization Act of 1975. The bill should be brought to the floor in the near future.

**Federal Employees Group Life & Health Benefits.** The Subcommittee on Retirement and Employee Benefits of the House Committee on Post Office & Civil Service is conducting hearings on H.R. 73 which would increase the government's contribution to the costs of federal employees' group life insurance and health benefits insurance. Under the proposal, the government would pay 50% of the cost of the life insurance rather than the present 33-1/3%, and the government's share of the health benefits insurance would increase to 65% for 1976, 70% for 1977, and 75% for 1978.

**Copyright Law.** H.R. 2223, for the general revision of the Copyright Law, has been the subject of hearings before the Subcommittee on Courts, Civil Liberties & the Administration of Justice of the House Judiciary Committee.

**Consumer Protection.** S. 200, the Consumer Protection Act of 1975 is currently being debated in the Senate. Its purpose is to establish an independent consumer agency to protect and serve the interest of

consumers. The Administrator would be authorized to intervene in agency proceedings, and to appear before the courts as a party.

**Bankruptcy.** The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, held a hearing on H.R. 6184, to fix the salaries of referees in bankruptcy, receiving testimony from several bankruptcy judges. The Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee held hearings on S. 582, concerning the same subject. The House Judiciary Committee's Subcommittee on Civil and Constitutional Rights continued to hold hearings on H.R. 31 and H.R. 32, to establish a uniform law on the subject of bankruptcies.

**Additional Judgeships.** S. 287, a bill to provide for additional district judgeships, has been favorably reported to the full Senate Judiciary Committee with certain amendments. As recommended by the Subcommittee, the bill would authorize 30 additional district judgeships. The changes in the bill as originally introduced include an increase from one to two the number of additional district judges for the northern district of Georgia; one additional judge for the eastern district of Michigan; and elimination of an additional district judge for the district of New Jersey.

**Bills Introduced.** H.R. 6533, to authorize the payment of increased annuities to secretaries of justices and judges of the United States, was introduced April 30, by Congressman Matsunaga and referred to the Committee on Post Office and Civil Service.

S. 1549, to amend the Federal Rules of Evidence, was introduced by Senator Hart April 29 and referred to the Senate Judiciary Committee.

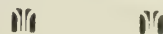
S. 1534, relating to voting rights of former offenders, was introduced on April 24, by Senator Percy.

H. 6318, to make possible the use of Spanish in the U.S. District

Court for the District of Puerto Rico was introduced April 23, by Congressman Rodino.

H.R. 6183, to amend the Bankruptcy Act and the Civil Service Retirement law with respect to the tenure and retirement of referees in bankruptcy was introduced April 21, by Congressman Edwards.

H.R. 6207, to amend Title 18 and Title 28 of the U.S. Code to remove the possibility of abuse from the grand jury system without removing the effectiveness of the grand jury as a tool for investigating and returning indictments, was introduced on April 21 by Congressman Rangel.



## COMPUTER-AIDED TRANSCRIPTION PROJECT MOVES FORWARD

The number of reporters participating in the Center's C.A.T. project increased to fifteen during May. Several more are scheduled to enter the program in June.

To date, all participating reporters are working with Stentran Systems, Inc. of Vienna, Virginia. The Center is negotiating with other companies who will start working with reporters in June or July. The first fifteen reporters were from the districts of D.C., Md., E.D. Va., E.D. Pa., W.D. Pa., E.D. Michigan and N.D. Ohio. Reporters from other districts will become part of the project as arrangements are made with additional companies.



(RESEARCH from pg. 6)

In short, familiarity with both the problems faced by the federal appellate courts and the possible cures may engender more acceptance. Hence, if more attorneys become familiar with new procedures and the problems they address, their support for these procedures may also increase.

(A copy of the report entitled, *Attitudes of U.S. Judges Toward Limitation of Oral Argument and Opinion-Writing in the U.S. Courts of Appeals* may be obtained from the Federal Judicial Center Information Service. A copy of the lawyers' survey report is also available upon request.)



# GO FJC calendar

- May 29 Judicial Conference, Court of Customs and Patent Appeals, Washington, D.C.
- June 1-3 D. C. Circuit Conference, Williamsburg, Virginia
- June 20 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.
- June 25-28 Fourth Circuit Conference, Hot Springs, Virginia
- June 25-28 Eighth Circuit Conference, Fargo, North Dakota
- June 30-July 1 Judicial Conference Subcommittee on Judicial Improvements, Jackson Lake, Wyoming
- July 7 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.
- July 10-13 Sixth Circuit Conference, Mackinac Island, Michigan
- July 18 Judicial Conference Magistrates Committee, Washington, D.C.

8

## BILL EXPANDING MAGISTRATES' JURISDICTION IS INTRODUCED

Senator Quentin Burdick March 21 introduced S.1283 which, if enacted, will expand the jurisdiction of U. S. Magistrates.

The bill would amend Section 636(b) of Title 28, U. S. Code to read as follows; "(b) (1) Notwithstanding any provision of law to the contrary, a judge may designate a magistrate to hear and determine, subject to review as hereinafter provided, any pretrial matter pending before the court except motions which are dispositive of the litigation, the disposition of which the magistrate may recommend, but not order. A judge may also designate a magistrate to conduct evidentiary hearings and make recommendations for the disposition of applications for post-trial relief made by individuals convicted of criminal offenses and prisoner petitions challenging conditions of confinement. Upon timely request, as fixed by local rule of court, by any party who has appeared before the magistrate, either personally or by submission of affidavits or brief, the court shall hear *de novo* those portions of the report or specific proposed findings of fact or conclusions of law to which objection is made. ¶¶

## PERSONNEL

### Appointments

Stanley S. Brotman, U.S. District Judge, D.N.J., April 23  
Thomas J. Meskill, U.S. Circuit Judge, 2nd Cir., April 24  
Robert O'Connor, Jr., U.S. District Judge, S.D.Texas, April 28

### Elevations

Joseph W. Morris, Chief Judge, U.S. District Court, E.D.Okla., April 19  
James B. Parsons, Chief Judge, U.S. District Court, N.D.Ill., April 16  
Herbert P. Sorg, Chief Judge, U.S. District Court, W.D.Pa., April 26

### Confirmation

Dick Yin Wong, U.S. District Judge, D.Hawaii, April 24

### Nomination

William H. Stafford, Jr., U.S. District Judge, N.D. Fla., April 18

### Resignation

Harold R. Tyler, Jr., U.S. District Judge, S.D.N.Y., April 6

### Death

Frederick G. Hamley, U.S. Senior Circuit Judge, 9th Cir., May 5

THE THIRD BRANCH

VOL. 7, NO. 5 MAY 1975

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## Bulletin of the Federal Courts

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JUNE, 1975

### UNLESS CONGRESS MODIFIES SUPREME COURT JURISDICTION—CHIEF JUSTICE SAYS NATIONAL COURT INEVITABLE

The Chief Justice, in a letter May 29 to Senator Roman L. Hruska, chairman of the Commission on Revision of the Federal Court Appellate System, said that unless Congress acts to relieve the Supreme Court of some of its mandatory jurisdiction, the creation of an intermediate court is inevitable.

He wrote Senator Hruska, "As to the proposal for an intermediate court, I have no doubt that if the Congress does not curtail the jurisdiction of the Supreme Court, in some way generally comparable to the 1925 Judiciary Act, then surely a solution must be found by creating such a court."

One jurisdictional revision, The Chief Justice said, which would give some relief to the Supreme Court is the elimination of mandatory jurisdiction by statute. He pointed out that in 1942 the proportion of cases decided by the Supreme Court on the merits under its mandatory jurisdiction was only 29 percent; by 1972, it had reached 60 percent.

However the creation of a new national court is such a significant step, The Chief Justice suggested that it might be put into effect on an experimental basis for five years using judges from the ranks of present federal judges on a rotating basis.

The Chief Justice pointed out that some of his suggestions in some respects may be beyond the

(See CHIEF JUSTICE pg. 2)

### SENATOR JAVITS CALLS FOR JUDICIARY PAY HIKE

In remarks delivered on the Senate floor June 6, Senator Jacob K. Javits said Congress "must face up to this problem and not sacrifice the quality of the judiciary" by refusing to increase judicial salaries.

He told the Senate that "since 1969, in spite of drastic increases in the cost of living, Federal judicial salaries have been frozen. This has resulted in hardships for many judges in high cost areas of the country and has resulted in resignations in the southern district of New York and elsewhere.

"Traditionally Federal district judges salaries have been related to congressional salaries. . . [but they] . . . need not be tied in law to Federal judges salaries."

(See JAVITS pg. 2)

JULY 16, 1975

D105-A

### NATIONAL APPEALS COURT URGED REVISION COMMISSION SUBMITS FINAL REPORT

At a formal ceremony at the White House June 20, the Commission on Revision of the Federal Court Appellate System presented its final report to the President, The Chief Justice and leaders of both the House and Senate.

The 16-member Commission headed by Senator Roman L. Hruska called for the creation of a National Court of Appeals, a permanent seven-member Article III Court which would sit en banc in Washington, D.C.

Its decisions would constitute precedents binding upon all other federal courts and, upon state courts in cases involving federal issues, unless modified or overruled by the Supreme Court.

(See COMMISSION pg. 2)

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(CHIEF JUSTICE from pg. 1)

scope of the problems which the Revision Commission was authorized to study but, he added, "The problems of the Judicial Branch must be viewed not court-by-court but on a system and nationwide basis."

"In the long run," he continued, "we will not have accomplished very much if we solve problems at one end of the spectrum, but do not solve them at the other end on a basis consistent with our Constitution and with national tradition and experience. I would, therefore, summarize the observations I have made so far by suggesting that the objections of those who are opposed to an intermediate federal court would be met if other possible alternatives were first exhausted."

He recommended two key remedies which could relieve the caseload burden of not only the Supreme Court but courts of appeal and district courts:

- "The elimination of three-judge courts and the elimination of all direct appeals to the Supreme Court, leaving it to statutory provisions for expediting appeals to deal with emergency cases." He noted that this may add to the burden of the courts of appeals but said this would be offset significantly by relieving circuit judges from serving on these three-judge district courts.

- Secondly, The Chief Justice called for the elimination of diversity jurisdiction in all federal courts: "Continuance of diversity jurisdiction is a classic example of continuing a rule of law when the reasons for it have largely disappeared."

This move would not relieve the Supreme Court of any of its burden and would only moderately help the courts of appeals but, he said, "... it is a change which is called for to carry out the fair distribution of the total litigation of this country between the states and the

federal system."

Turning to the first recommendation of the Hruska Commission, the creation of two new judicial divisions by dividing both the Fifth and Ninth Circuits into two new divisions each, he endorsed the concept in principle: "To continue large circuits such as the Fifth and the Ninth under one administrative direction is totally unrealistic . . . no circuit should be geographically structured in a way that requires more than nine circuit judges."

However, The Chief Justice said he had reservations about placing the responsibility of choosing the chief judges of these new divisions on the shoulders of the Supreme Court: "... it would be both an unwise burden to place on the Supreme Court and would involve the risks of having the Supreme Court drawn into controversial matters in its relations with the several circuits."

The Chief Justice told Senator Hruska that "It is my hope that the Commission's study will stimulate Congressional action leading promptly to reducing the jurisdiction of the federal courts, including the Supreme Court." ■■

(JAVITS from pg. 1)

Senator Javits then inserted into the Congressional Record the study prepared for the Judicial Conference Committee on Judicial Compensation making a case for a judicial pay increase, pertinent sections of which were published in the April, 1975 issue of *The Third Branch* on pp. 4-5 (for complete text see the June 6, 1975 Congressional Record p. S.10013).

■■ ■■

## PERSONNEL

### Appointment

William H. Stafford, Jr., U.S. District Judge, N.D. Fla., May 30

### Death

Francis J.W. Ford., U.S. Senior District Judge, D. Mass., May 26

(COMMISSION from pg. 1)

The jurisdiction of this new court would be twofold: First by reference from the Supreme Court and, secondly, by transfer from the Circuit Courts of Appeals, the Court of Claims and the Court of Customs and Patent Appeals. Any case decided by this court, either by reference or transfer, would be subject to review by the Supreme Court upon petition for certiorari.

Turning to the Commission's recommendations concerning the internal operating procedures of the circuit courts, the Commission recommended that each court establish a mechanism for formulating, implementing, monitoring and revising circuit procedures. This mechanism would require: (a) publication of the court's internal operating procedures; (b) notice-and-comment rule-making as the normal instrument of procedural change; and (c) an advisory committee, representative of both the bench and bar.

Minimum national standards pertaining to the granting or denial of oral argument should be instituted, the Commission recommended. Oral argument should be granted as a matter of right unless the appeal is frivolous; the dispositive issue or set of issues has recently been decided; or the facts are simple and the determination of the appeal rests on the application of settled rules of law, and no useful purpose could be served by oral argument.

The Commission recommended that oral argument be appropriately shortened in cases in which the dispositive points can be adequately presented in less than the usual time allowable.

Turning to another key aspect of the Commission's recommendations, opinion writing and publication, the Commission recommended that in every case there be some record, however brief and whatever the form, of the reasoning underlying the decision.

On the use of central staff, the Commission recommended that Congress provide funds for the optimal utilization of such staff and



that they be given such duties as research, preparation of memoranda and the management and monitoring of appeals to assure that cases move toward disposition with minimum delay.

The Commission called upon Congress to create new appellate judgeships "wherever caseloads require them."

As to the problem of assuring judges of superior quality in adequate numbers, the Commission said the President and Congress should act quickly to fill all vacancies, that "Federal judicial salaries should be raised to a level that will make it possible for outstanding individuals to accept appointment to the bench and adequately compensate those now serving."

The Commission also recommended that the requirements for attaining senior status be eased: "... a judge should be eligible for retirement when the number of years he has served on the bench, added to his age equal eighty, as long as the judge has served a minimum of ten years and has attained the age of sixty."

The Chairman of the Commission, Senator Roman L. Hruska, said he plans to introduce legislation after this session to implement the commission's recommendations. Legislation implementing the commission's initial proposals, those dealing with the division of both the Fifth and Ninth Circuits into two new divisions each, has already been introduced and hearings are being held on this circuit-splitting proposal.

(Note: This is a condensed summary of the Revision Commission's 109 page report entitled *Structure and Internal Procedures: Recommendations for Change*. A copy of the full report is available from the Commission on Revision of the Federal Court Appellate System, 909 Courts Building, 717 Madison Avenue, N.W., Washington, D. C. 20005.)



Left to Right: Chief Judge Howard T. Markey, The Chief Justice and ABA President James D. Fellers who spoke at the C.C.P.A. Conference luncheon last month.

### C.C.P.A. BENCH AND BAR MEET

Soon after Chief Judge Howard T. Markey assumed office at the Court of Customs and Patent Appeals he turned his attention to a review of his court, its procedures and its history.

One of his first observations was what he later referred to as an "iron curtain" which hung between the C.C.P.A. judges, its supporting personnel and the members of the bar who handle cases in this specialized area of the law. Chief Judge Markey considered this both undesirable and unnecessary.

Among his first steps was to plan a bench-bar conference to discuss customs and patent cases, how they are filed and disposed of, and what might be done to improve upon the process.

The conference was held in April 1974, in Washington, D.C., marking a first in the history of this court.

At the conclusion of this successful conference plans immediately went forward for a second which was held May 29, 1975. Over 800 attended, some 200 more than last year.

Present plans are to hold the conference annually, probably in the spring.

### FOUR NATIONS SIGN LETTERS ROGATORY

The Department of State has advised the Administrative Office that Czechoslovakia, Italy, Portugal and Sweden have signed the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (opened for signature on March 18, 1970). The Convention deals with the procedures to be utilized in obtaining evidence from abroad, as well as the procedures to be followed in the United States when a request is received from a foreign court.



## PRESIDENT FORD PRESENTS "STRONG" CRIME MESSAGE TO CONGRESS

President Ford June 19 sent Congress what Attorney General Edward H. Levi described as a "strong" but not "vindictive" anti-crime message designed, the President said, to "put the highest priority on the victims and potential victims."

The President asked Congress to enact legislation that would:

- Tighten existing gun control laws and outlaw the manufacture of so-called "Saturday night specials," the cheap handguns used in numerous inner-city crimes. He said he has ordered the Treasury Department to tighten its enforcement efforts in the nation's 10 largest areas and directed the Department to hire an additional 500 agents specifically to enforce the gun control laws in these areas.
- Require Federal judges to sentence certain offenders such as repeat offenders to a minimum prison term. "There should be no doubt in the minds of those who commit violent crimes — especially crimes involving harm to others — that they will be sent to prison if convicted under legal processes that are fair, prompt and certain," he told Congress.
- Require compensation for physical injuries to victims of crime. This compensation would come from federal fines and Federal Prison Industry profits which currently go directly to the U.S. Treasury.
- Create 51 new federal judgeships in 33 judicial districts — the current proposal now before Congress in the Omnibus Judgeship Bill.
- Allow federal appellate courts to review district court sentences and either lower or increase them as the appellate judges deemed appropriate.

The President also asked Congress to enact S.1, the voluminous bill now before the Senate Judiciary Committee which would codify the present federal criminal code but also add additional sections such as those dealing with the appellate review of sentences.

He also asked Congress to renew LEAA's authorization for five years and increase its annual funding from \$1.25 billion to \$1.3 billion with the added \$50 million earmarked for LEAA programs aimed to reducing crime in the larger cities.

(Copies of the full text of the President's Message are available from the Federal Judicial Center's Information Service.)



## A.O. DIRECTOR TELLS CONGRESS JUDGES NEED "STOP-GAP" PAY HIKE

In testimony presented June 20 before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, Administrative Office Director Rowland F. Kirks said the Judicial Conference of the U.S. urges that all federal judges, justices and other senior members of the judiciary receive an immediate 20% pay increase as a "stop-gap" measure to help halt the exodus of good judges from the nation's federal courts.

Director Kirks said the bill, H.R. 6150, the so-called Railsback bill introduced April 17 (see the April, 1975 issue of *The Third Branch*, pg. 1), amounts to a partial catch-up in judicial salaries. The six year freeze on judicial salaries, coupled with the escalating inflationary spiral has reduced judicial purchasing power by 32% as of March 1975 — projected to increase to 37% by March 1976.

He told the Subcommittee that an amendment is needed which will allow all members of the federal

judiciary to receive periodic comparability pay adjustments.

In addition, the Director also said the salary freeze has hurt and is continuing to hurt the federal judicial system and, in turn, the national welfare since nine able and experienced judges have resigned for salary reasons and it is becoming increasingly difficult to find able lawyers to replace these vacancies. Moreover, he said, U.S. Magistrates and Bankruptcy judges also are resigning for salary reasons.

"In the intervening six years the income of general schedule employees in the federal service has increased over 50% while judicial salaries have been frozen at the 1969 figure. This disparity of treatment should be rectified without further delay," he testified.

Turning to the other three key sections of the bill; elimination of three-judge district courts (except in civil rights, racial discrimination and reapportionment cases), expansion of the jurisdiction of U.S. Magistrates and protection of the employment rights of federal jurors, Director Kirks made these points:

- Three judge courts severely drain judicial manpower and direct appeals from these courts have become burdensome to the Supreme Court. The Railsback bill "preserves the three-judge district court in reapportionment cases, in injunctive cases founded on allegations of racial discrimination, and in other civil rights and voting rights cases otherwise governed by separate and special three-judge court provisions.
- Magistrates should have an opportunity to go directly to federal prison and take testimony from inmates and other witnesses with respect to the claims and file a report with the judge along with his recommendations. Additionally, magistrates would have an opportunity to hear pre-trial matters and conduct pre-trial conferences both in civil and criminal cases but only a district judge could enter a final order in a pre-trial



matter which finally disposed of the litigation.

As a result, by changing the jurisdictional provisions of the Federal Magistrates Act, Congress would enable the district courts to fully utilize magistrates today as both civil and criminal caseloads continue to dramatically increase.

Turning to the employment rights of federal jurors, Director Kirks said, "A juror should not be made to suffer serious economic consequences for performing this civic duty. . . [and should be able to perform his duties] objectively without the oppressive fear that he may have no job when he completes his jury service."

¶ ¶

#### ANTIOCH LAW SCHOOL SEEKING GRADUATE CLINICAL FELLOWS

The Antioch School of Law in Washington, D.C. is seeking candidates for the school's new Graduate Clinical Fellowship Program. Six fellowships will be awarded in July of this year and will each be for an eighteen-month program beginning in September. In addition to a stipend of \$12,000 fellows will receive a tuition grant.

The school will offer the fellows a broad range of experiences such as training in the design and conduct of clinically-based seminars for J.D. candidates as well as participation in the design and implementation of a prepaid legal services program. Candidates should be out of law school for at least one and preferably two years and have already been admitted to the bar of a state or will be prior to next September. Interested applicants should contact the Graduate Fellows Committee, Antioch School of Law, 1624 Rescent Place N.W., Washington, D.C. 20009. ¶

#### PRESIDENT APPROVES JUDICIARY SUPPLEMENTAL FUNDS REQUEST

President Ford has approved the Second Supplemental Appropriation Bill for fiscal year 1975 (H.R. 5899). It includes the full amount requested for Speedy Trial Planning, \$2.5 million, and for Pretrial Services Agencies, \$10 million.

\$1,020,000 is included for the FJC to accelerate the development and implementation of a computerized information system, COURTRAN II, and \$112,000 for the A.O. to cover additional salaries and expenses to be incurred in implementing the Speedy Trial Act of 1974.

\$52,000 has been provided to employ 34 additional bankruptcy clerks. Provision in the legislation was made to transfer \$1.2 million from the appropriation for space and facilities to cover a deficiency in the appropriation for furniture and furnishings.

In Title II of the bill, \$3,069,800 was included to cover increased pay costs resulting from general pay increases granted supporting personnel in October 1974. Savings in appropriations for juror fees and space facilities will be transferred to offset these pay increases.

Over one million was saved in the juror appropriation, primarily from improvements in jury management and using six-member juries in civil trials. The savings in the space and facilities appropriation represents reductions in G.S.A. billings because of changes in space classifications and rental charges.

As for the \$2.5 million earmarked for Speedy Trial Planning purposes, the A.O. is completing plans regarding the allocation of funds for this purpose to the respective district courts.

¶

#### EIGHTY-ONE DISTRICTS NOW USE SIX-MEMBER JURIES

Eighty-one Districts have now adopted some type of local rule which permits the use of six-member juries in civil cases.

In 1970 Mr. Justice White in an opinion of the Supreme Court in the case of *Williams v. Florida*, rejected a long-standing contention that the Sixth Amendment requirement of trial by jury also meant that all jury panels must be constituted with no less than 12. Up to this time civil cases in federal courts had been tried before juries of less than 12 in some districts, by stipulation, but this was the exception rather than the rule.

Chief Judge Edward J. Devitt in 1971 announced through a court order dated January 1 that in the District of Minnesota civil cases would be tried before juries of six in approximately 80 percent of the cases. The following March the

Judicial Conference of the United States adopted a resolution proposed by the Committee on the Operation of the Jury System which ". . . approved in principle a reduction in size of juries in civil trials in United States district courts, and upon such reduction that there be a diminution in the peremptory challenges normally allowed. It is also resolved that the means to effectuate the objectives set forth in this resolution, i.e., by rulemaking or statute, be referred to the Committees on Civil Rules and on the Operation of the Jury System."

The trend to switch from twelve to six continued and gained momentum with the affirmance by the Ninth Circuit Court of Appeals in the case of *Colgrove v. Battin*. Petitioner in that case had challenged a local rule in the District of Montana and an order of U.S. District Judge James F. Battin

(See JURY pg. 6)

ANTIOCH SCHOOL OF LAW



(JURY from pg. 5)

that a civil trial be heard by a jury of six. The Supreme Court upheld the action of the Ninth Circuit on June 21, 1973.

Two recent developments reinforce the concept of truncated juries in civil cases. One is the recent publication of the second volume of a series of reports to be issued by the ABA Commission on Standards of Judicial Administration called *Trial Courts*. The report proposes standards which would permit six-member juries in federal and state civil trials and in some criminal trials. Commenting on the report Mr. Justice Louis H. Burke, (Sup. Ct. Calif. Ret.), Chairman of the Commission, said that "Practice and views on the appropriate size of civil juries [in the state courts] differ throughout the country. If the question could be considered without regard to historical precedent, the optimum size of the jury might well be regarded as 8 or 9, a number affording greater representativeness than 6 while involving lower cost than 12."

The second development is the introduction Jan. 17 of Senate Bill S.237 by Senator Quentin N. Burdick which provides for the use of six-member juries in civil cases in all U.S. District Courts. Hearings on the bill are planned for the Fall of 1975. ¶

#### LOS ANGELES MAGISTRATE ELECTED TO HEAD NATIONAL MAGISTRATES COUNCIL

U.S. Magistrate Ralph J. Geffen (C.D.Ca.) was elected 1975-76 President of the 300-member National Council of U.S. Magistrates during the group's Annual Conference last month in Colorado Springs, Colorado. He succeeds Magistrate William L. Garrett (E.D. Ca.).

Magistrate Geffen was appointed in January, 1971. He graduated from UCLA in 1948 and received his law degree in 1951 from the University of Wisconsin Law School. After teaching at Stanford Law School, he entered private practice in Los Angeles in 1952.

## LEGISLATION

**CRIMINAL RULES:** H.R. 6799, the Federal Rules of Criminal Procedure Amendments Act, was reported with amendments by the House Judiciary Committee on May 29, 1975, and general debate has been completed. Final action on the bill is expected in the very near future. (A comprehensive analysis will be published when the bill passes.)

**CONSUMER LEGISLATION:** S. 200 passed the Senate on May 15, 1975, and is now pending in the House Committee on Government Operations. The bill establishes an independent consumer agency which may intervene in agency or court proceedings that substantially affect an interest of consumers. Under certain limited circumstances, the agency may initiate court proceedings.

**BANKRUPTCY LEGISLATION:** H.R. 6184, which would increase the salaries of bankruptcy judges to \$36,000, has been approved by the Subcommittee on Civil and Constitutional Rights for full House Judiciary Committee action.

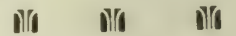
H.R. 31 and H.R. 32, bills which would revise the bankruptcy system, were the subject of hearings before the Subcommittee on Civil Rights and Constitutional Rights of the House Judiciary Committee.

**COPYRIGHT LAW:** The Subcommittee on Courts, Civil Liberties and the Administration of Justice has held hearings on H.R. 2223, for the general revision of the Copyright Law. Further Hearings are scheduled in July.

**JUDGES SALARIES:** Hearings on H.R. 6150, and related bills, on judicial salaries are scheduled for June 20 and 23 before the Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee.

**ANTI-TRUST:** The Senate Judiciary Committee, Subcommittee on Antitrust and Monopoly has conducted extensive hearings on S. 1284, to improve and facilitate the expeditious and effective enforcement of the antitrust laws, and S. 1637, to increase the effectiveness of discovery in civil antitrust investigations.

**ENERGY LEGISLATION:** The Subcommittee on Separation of Powers of the Senate Judiciary Committee has held a hearing to assess administrative procedure and judicial review provisions incorporated in current and proposed energy legislation. Testimony was received from representatives of the FEA, Consumers Union, the ABA and others.



#### BOARD OF SUPREME COURT HISTORICAL SOCIETY ANNOUNCED

The Board members of the Supreme Court Historical Society who will play a prominent role in guiding the Society during its next cent years, were announced last month.

This list includes persons well known nationally and many who will be recognized as being closely related to Supreme Court history. But these factors alone did not prompt their nomination for they all have above average interest in the purposes of this organization. Their zeal is already apparent and because of their plans projected well into the future are far ahead of schedule.

Trustees named to date who will serve for staggered terms are:

#### BOARD OF TRUSTEES

Justice Tom C. Clark, Chairman

Ralph E. Becker  
Mrs. Hugo L. Black  
Herbert Brownell  
Vincent C. Burke  
Mrs. Morris Cafritz  
William T. Coleman  
Patricia Collins Dwinell  
Charles T. Duncan  
Newell W. Ellison



## BOARD OF TRUSTEES (Continued)

Elizabeth Hughes Gossett  
Erwin N. Griswold  
Joseph H. Hennage  
A. Linwood Holton  
Nicholas D. Katzenbach  
Earl W. Kintner  
Francis R. Kirkham  
Rowland F. Kirks  
David L. Kreeger  
Sol M. Linowitz  
Glen A. Lloyd  
Richard A. Moore  
David A. Morse  
Alice L. O'Donnell  
Dr. Melvin M. Payne  
William P. Rogers  
Fred Schwengel  
Bernard G. Segal  
Whitney North Seymour  
Robert T. Stevens  
Hobart Taylor, Jr.  
Fred M. Vinson, Jr.  
J. Albert Woll

The By-Laws provide that the work of the Board will be supported by an Advisory Council. This list includes individuals whose professional and private lives are related closely to the work of museums, archives, literature and the arts. Those names to date are:

### ADVISORY COMMITTEE

William F. Swindler, Chairman  
Clement E. Conger  
Richard H. Howland  
Carlisle Humelsine  
T. Perry Lippitt  
Merlo J. Pusey  
Charles E. Van Ravenswaay  
Dr. James B. Rhoads  
S. Dillon Ripley  
Erwin C. Surrency  
Arthur E. Sutherland  
George M. White

Persons interested in fostering an informed understanding of the Supreme Court and the Federal Judiciary are eligible for membership in the Society. The initial invitations to membership will be mailed in June. State membership chairmen will be announced soon. Inquiries about membership and Society plans should be directed to The Supreme Court Historical Society, 1629 K Street, W., Washington, D.C. 20006, telephone 202-785-0298. ¶¶

## PAROLE REORGANIZATION ACT PASSES HOUSE: HEARINGS SET FOR JULY IN SENATE

The Parole Reorganization Act of 1975 was passed by the House of Representatives May 21 and hearings have been set to begin in early July before the Senate Judiciary Subcommittee on National Penitentiaries.

The bill would reconstitute the U.S. Parole Board as the U.S. Parole Commission, an independent agency within the Justice Department, which would be organized into five geographic regions.

The House Judiciary Committee's report on the bill states that the purpose of the bill is to provide, "... an infusion of procedural protections into the federal parole system at the initial determination stage as well as the appellate and revocation levels [with] ... the purpose. . . to insure a fair and equitable parole process."

Specifically, the bill:

- Provides definite time periods at which the prisoner shall be eligible for parole and eliminates uncertainty while allowing the inmate time to prepare for his hearing.
- Shifts the burden to the Commission to make a positive finding if an inmate is not ready for release—providing his prison record indicates he has observed the rules of the institution.
- Spells out the factors to be taken into account when considering parole and allows the inmate to have access to this material.
- Requires that proper notice be given to the inmate of the time and date of his hearing.
- Requires that the inmate be permitted an advocate at his hearing to speak for him and assist him in preparing his case. Provision is made for the payment of reasonable expenses incurred by the advocate.
- Requires that once the inmate is released, that the time he spends as a law abiding citizen on the street be counted against the

remainder of his sentence.

- Permits appeal on the merits to the regional commissioner and the National Appellate Commission.
- Establishes a hearing process with complete Sixth Amendment protections for the revocation or modification of parole.

The House Judiciary Committee, in its report on the bill, commended the Parole Board for "establishing a working relationship" with the House Committee and actually putting many of the bill's provisions into effect as the hearings progressed in the House.



## ADMINISTRATIVE OFFICE ISSUES WIRETAPPING REPORT

The Administrative Office of the United States Courts issued its seventh report to the Congress on applications for orders authorizing or approving the interception of wire or oral communications.

The report summarizes the period January 1, 1974 to December 31, 1974 and includes reports from both state and federal judges who are required under the Omnibus Crime Control and Safe Streets Act of 1968 to file written reports with the Director of the Administrative Office on each application made to them for an order authorizing interception of a wire or oral communication.

During calendar 1974, 730 applications were made and two were denied (by Connecticut state judges). Of the 728 granted, 121 were signed by federal judges while 607 were granted by state judges. The overwhelming majority of state orders were concentrated in New York and New Jersey with 305 and 138 respectively or 23 percent of all state orders signed.

There was a 16 percent decrease from the preceding year in the total number of orders authorized, 728 in 1973 to 607 in 1974. (The complete report is available from the Administrative Office of the United States Courts.)



# dojfc calendar

- July 7 Judicial Conference Committee on Bankruptcy Administration, Washington, D.C.
- July 10-13 Sixth Circuit Conference, Mackinac Is., Mich.
- July 18 Judicial Conference Magistrates Committee, Washington, D.C.
- July 18-20 Advisory Committee on Bankruptcy Rules, Washington, D.C.
- July 21-24 Ninth Circuit Conference, San Francisco, Ca.
- July 21 Judicial Conference Standing Committee on Rules, Washington, D.C.
- July 23-26 Tenth Circuit Conference, Santa Fe, N.M.
- July 28-29 Judicial Conference Committee on Court Administration, San Francisco, Ca.
- Sept. 25-26 Judicial Conference of the United States, Washington, D.C. (Note date changed)

## CORRESPONDENCE COURSE ENROLLMENT MAY TOP 1,000

The Correspondence Course on Supervision which is being sponsored by the Education and Training Division has experienced an enthusiastic reception. Since its inception in February, 650 members of the federal courts have enrolled. 70% are members of Clerk's Offices or on the staff of Judges, Bankruptcy Judges, and Magistrates. Approximately 30% of the participants are Probation Officers or Chief Clerks in Probation Offices. The Education and Training Division expects the enrollment to reach 1,000 within the next several months.

The basic purpose of this course is to assist new and experienced supervisors, in addition to those who aspire to supervisory positions, in learning or relearning 3 basic skills. These are: basic supervisory principles and skills; the use of communications, both verbal and written; human relations and its importance in supervising people. Anyone who is interested in receiving more information or enrolling in the course is encouraged to contact the Federal Judicial Center Division of Continuing Education and Training. ¶

## NEWLY APPOINTED JUDGES

### CENTER HOLDS DISTRICT JUDGES SEMINAR

During the week of June 9-14, the Federal Judicial Center held a Seminar for Newly Appointed District Court Judges.

This is the first step taken by the Center in its process of providing continuing legal education to the federal judiciary. In addition the Center's resources are made available, including use of a Cassette Library and the assistance of the Center's Information Service. Normally, a federal judge can expect to return for a second seminar after having served on the bench for two years.

The co-chairmen of the conference were Judge William J. Campbell, (ND-III.), an Assistant Director of the Center, and Judge Alfred P. Murrah, (CA-10), Assistant Director and Director Emeritus of the Center. Both have been, for many years prime advocates for programs of continuing legal education for all members of the judiciary. ¶

THE THIRD BRANCH  
VOL. 7, NO. 6 JUNE 1975

## THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

VOL. 8, NO. 7

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

JULY 1975

### PRESIDENT ADDRESSES SIXTH CIRCUIT

#### CITES "NEED" FOR JUDICIAL PAY INCREASE

**MACKINAC IS., MICH., July 13—** President Ford told the Sixth Circuit, "Now, despite the importance of the Judiciary, I think we on the outside do not recognize that many of the problems that you face and that you tackle are often unnoticed and unreported. Too often we pay attention only when federal court decisions are controversial, or the problems of court management become overwhelming.

"You know better than even those of us who look at the statistics, that the caseloads in federal courts have expanded tremendously in the past decade.

"Those of you on the federal bench know personally about the 25 percent increase in criminal cases, and the 55 percent increase in civil cases between 1964 and 1974. And I think, with mixed blessings, we recognize that the Sixth Circuit is one of the busiest and most productive and has one of the finest records, according to the statisticians in the country. And I compliment you and congratulate all of you, those on the Circuit Court as well as those in the district courts, for that very enviable record.

This is an excerpted text of the President's remarks. A complete text is available from the Federal Judicial Center Information Service.]

"You have this impressive record of accomplishment in keeping up with the explosive development of cases in or under Federal jurisdiction, and by all of the experts that have read you have handled these tremendous responsibilities extremely well.

"But I think it is self-evident there is a very serious question how long the federal Judiciary will be able to function smoothly without additional manpower.

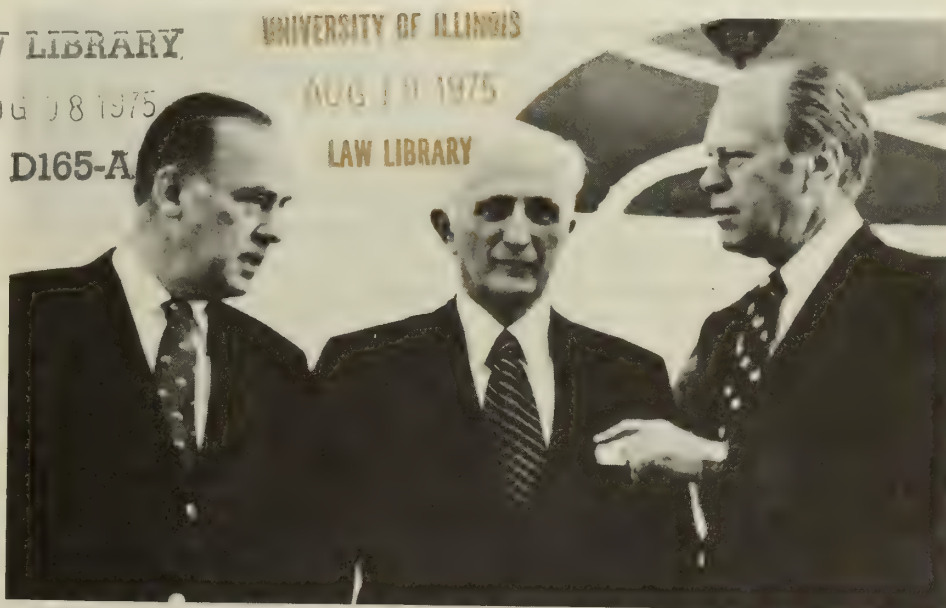
"And I can say with emphasis that this Administration strongly supports the recommendations for additional district and circuit court judgeships.

"Your judicial conferences have held on more than one occasion, the  
(SEE PRESIDENT pg 6)

#### MAGISTRATE APPOINTED TO FLORIDA SUPREME COURT

In a signal honor, U.S. Magistrate Joseph W. Hatchett (M.D. Fla.) was appointed by Governor Reubin Askew on July 8 to the Florida Supreme Court.

Governor Askew said that Magistrate Hatchett was selected from a list of seven attorneys and judges recommended by the Florida Supreme Court Nominating Commission and added that "he is eminently qualified". Hatchett was named a U.S. Magistrate in January 1971 and participated as a member of the task force that studied the role of masters in the Judicial System of England.



Pictured above are, left to right, Mr. Justice Potter Stewart, Circuit Justice for the Sixth Circuit, Chief Judge Harry Phillips and President Ford prior to the President's address to the annual Sixth Circuit Judicial Conference.



Speed vs. Quality

### THE FJC'S DISTRICT COURT STUDIES PROJECT: AN UPDATE REPORT

The Federal Judicial Center's District Court Project researchers will begin publishing some of their preliminary findings this fall following extensive interviews with judges and key court officials in numerous district courts.

Primarily, these findings will concern the relative efficiency of different procedures observed in five metropolitan courts which were visited during the previous 18 months. During these visits, however, several judges mentioned their concern that emphasis on speed in the federal judiciary may be compromising the quality of proceedings.

In response to this concern, the Center is making a series of return visits to several courts to identify as specifically as possible why some judges fear quality may be compromised. These discussions have been invaluable in guiding the Center as recommendations are drawn from the information gained in the initial visits to district courts.

The most striking as well as gratifying finding is that the recommendations which the FJC staff researchers are in the process of developing are generally compatible with the concerns judges have expressed.

It appears at this point that speed, efficiency, and justice are not only compatible but mutually supportive as far as the specific conclusions of this project are concerned. Most recommendations that are emerging to speed a court's handling of its docket will concern expeditious treatment during the pleadings and discovery stages of all cases, but especially of comparatively routine cases.

On the other hand, the perceptions of some judges regarding likely threats to the quality of justice involve trial scheduling. Some judges feel some litigants are being rushed to trial after their case has been on the docket for some time,

despite new problems which would justify a delay.

Such problems would include, for example, a subsequent state proceeding on the same issues that would not be forestalled by the federal trial, a finding after extensive discovery proceedings that another party should be added, and the inability to find a key witness.

According to the Project Director, Steven Flanders, preliminary data indicates that the FJC's recommendations will focus primarily on procedures to set up relatively short, but tailor-made schedules for discovery in each case. The courts in the study with the fastest disposition times have procedures that assure receipt of the answer promptly and establish a time period for discovery that is roughly in proportion with the minimum required under the Federal Rules.

A simple case would require all discovery within sixty to ninety days; a complex case more. Present procedures, even in courts that set what they regard as rather tight schedules, often result in a great deal of unused discovery time. Possibly the most interesting preliminary finding is that relatively simple cases are taking substantially longer than relatively complex cases.

It appears that procedures can be established to expedite the processing of the whole docket which do not imply any undue pressure on the complex cases. Procedures along these lines seem to show great promise to advance the shared desire for speedy and efficient justice. (For an earlier report on this project see *The Third Branch*, December, 1974, p.1.) ■

### COMMITTEE ACTS TO IMPLEMENT SPEEDY TRIAL REQUIREMENTS

To assist the District Courts in conforming their rule 50 (b) plan to certain provisions of the Speedy Trial Act of 1974, the Committee on the Administration of the Criminal Law has approved amendments to its Model Plan for the United States District Courts for Achieving Prompt Disposition of Criminal Cases. The amended model plan was circulated throughout the judiciary June 19, 1975.

The Committee also met on July 17 and 18 and approved interpretive guidelines for the administration of the Act. These will be distributed in the near future.

The amendments to the model plan under rule 50 (b) are principally designed to take account of the interim time limits provided by 18 U.S.C. § 3164. This provision requires that defendants in pretrial custody be brought to trial within 90 days of the beginning of continuous custody, and that released persons designated by the attorney for the Government as being of high risk be brought to trial within 90 days of the designation. The amendments also take account of the time limits applicable to retrials, which are contained in 18 U.S.C. § 3161 (e), and of time limits contained in the Federal Juvenile Delinquency Act.

The amended model plan is designed to cover the period from September 29, 1975, to June 30, 1976. On July 1, 1976, additional provisions of the Speedy Trial Act will become effective. These provisions are not reflected in the recent amendments.

Under the Speedy Trial Act, each district court is required to file a plan for compliance with the Act by June 30, 1976. It is anticipated that the district plans formulated pursuant to this requirement will be drafted in a manner that complies with both rule 50 (b) and the Speedy Trial Act, and will therefore supersede existing plans under rule 50 (b). ■

### NATIONAL CENTER FOR STATE COURTS RELOCATES

The National Center for State Courts has relocated its Washington Liaison Office. The new address is:

Washington Liaison Office  
National Center for State Courts  
1150—17th St., N.W., Suite 701  
Washington, D.C. 20036  
(202) 833-3270



## CA - 2 ADVOCACY COMMITTEE RELEASES ITS REPORT

In January 1974 Chief Judge Irving R. Kaufman, on behalf of the Judicial Council of the Second Circuit, appointed a prestigious committee to study and evaluate the quality of advocacy in the federal courts of the Second Circuit. The committee included experienced trial lawyers practicing in the Second Circuit, the U.S. Attorney for the Southern District of New York, a law school dean, a Federal District Judge, and two law professors. Committee Chairman was Robert L. Clare, Jr., a New York City attorney.

The committee was not only charged with the task of studying but was also mandated to come up with recommendations for innovative programs to teach the art of advocacy in the law schools, for amendments to the rules of admission to practice in the federal courts, for post-admission educational projects and a definitive analysis of standards and procedures for professional discipline.

The committee members moved quickly to complete their task and on June 23, 1975, formally released their report. Their conclusions are responsive to their assignment, and they reflect careful analysis and meaningful recommendations.

Their recommendations were arrived at after analyzing returns of a comprehensive questionnaire sent to all federal judges in the Second Circuit as well as personal interviews with judges, lawyers, and law professors. In addition, the views of bar associations were solicited and a survey was made of twelve law schools operating with national enrollments.

Conclusions in the report include:

- There currently exists a glaring lack of competency in trial advocacy in the federal courts in the Second Circuit, directly attributable to inadequate legal training.

- The heavy increase in litigation during the last decade is due to a trend which has found people in this country looking to government and especially the courts for solutions to their social and economic problems. This syndrome is buttressed by an expanding concept of constitutional rights and broad social and environmental legislation which leaves implementation to the courts.

- The public is deceived when unqualified attorneys are admitted to practice.

- Law school curricula should be restructured to assure that students receive at least the basic elements of trial advocacy; further, thirteen courses were listed as either essential or highly desirable and five were listed as important but nonessential.

- If law schools do not offer essential courses then continuing education should be pursued at educational organizations offering special training; or, in the alternative, that a Committee on Admissions be appointed by the District Chief Judge to determine whether an applicant to practice in the U.S. District Court without this special training, has by experience or otherwise gained equivalent knowledge of the required subject matter. Failing recourse to the federal bar by either of these routes, the Admissions Committee may in its discretion require an examination. This action of the committee would be subject to review by the District Court.

Three related developments are:

- (1) Chief Judge Kaufman's announcement that the Second Circuit Judicial Council has adopted a new rule which would permit third-year law students (under specified conditions) to appear and argue cases before the U.S. Court of Ap-

peals for the Second Circuit. [Several other Circuits, Third, Fourth, and D.C. have similar Local Rules.] It is part of this Circuit's continuing effort to raise advocacy standards. (2) the appointment by New Hampshire Supreme Court Justice William A. Grimes, Chairman of the Appellate Judges' Conference, of a special committee to develop ways to improve advocacy in the appellate courts. The committee will study the need for guidelines which would bring about successful advocacy, special training courses for practicing attorneys and possibly the establishment of a national college of appellate advocacy. (3) Chief Judge William B. Jones, (Dist. D.C.) said his additional responsibilities would restrict outside activities, but because of his concern for assuring good representation in the trial courts he will continue to support the National Institute for Trial Advocacy, an organization he helped establish. ¶¶

## NATIONAL INSTITUTE OF CORRECTIONS DIRECTOR NAMED

Attorney General Edward H. Levi has announced that Dr. Sherman R. Day has been appointed as the first Director of the National Institute of Corrections.

Dr. Day, a psychologist, corrections administrator and educator has been serving as the Administrator for Staff Development of the Federal Bureau of Prisons.

Dr. Day's appointment was recommended by the National Institute of Corrections' Advisory Board, a sixteen-member panel of government officials and private citizens who set policy for the newly-created Institute.

The N.I.C. was created as an agency of the Justice Department within the Bureau of Prisons by the Juvenile Justice and Delinquency Prevention Act which was enacted last September.

The Institute's purpose is to assist federal, state and local corrections agencies by providing management training, research and evaluation, information services and technical assistance. ¶¶



## STATISTICS REVEAL FEDERAL COURTS' CASELOADS CONTINUING TO MOUNT

The following statistics compiled by the Administrative Office of U.S. Courts' Information Systems Division reveal that the caseloads of the U.S. Courts are continuing to rise— with bankruptcy filings reaching a historic high — increasing 34.6 percent over the last eleven months.

These statistics graphically illustrate the business of the Judiciary today.

	1st 11 mo. FY 1974	1st 11 mo. FY 1975 (est.)	Percent change
Appeals			
Filings	14,957	15,142	1.2
Terminations	13,871	14,585	5.1
Civil			
Filings	94,300	106,138	12.6
Terminations	88,713	94,829	6.9
Criminal			
Cases filed	36,398	39,325	8.0
Defendants filed	49,490	52,871	6.8
Defendants terminated	52,315	52,927	1.2
Bankruptcy			
Filings	173,485	233,551	34.6
Terminations	158,839	170,906	7.6
Probation			
Persons received	38,261	41,516	8.5
Persons removed	33,360	37,090	11.2

### CALIFORNIA'S JUDGES WILL RECEIVE MAJOR PAY INCREASE IN SEPTEMBER

On September 1 California's 861 trial judges will receive a 12.34 percent cost of living increase which will make them among the highest paid judges of any in the nation. As of September 1, California's Municipal Judges will earn \$41,677 yearly and Superior Court Judges, \$45,299 yearly.

Only New York and Pennsylvania which pay trial judges \$48,998 and \$41,000 respectively pay their judges more than U.S. District Judges at the present time.

Since 1968 California Judges' salaries have been tied to a cost of living formula. The California legislature provided that judges would receive an across-the-board increase equal to the previous year's increase in the California consumer price index, as determined by the state's Department of Industrial Relations. ■■

### PAUL BENDER OF ADMINISTRATIVE OFFICE HONORED

Assistant Director Paul C. Bender of the A.O. Office of Plans and Analysis received the Distinguished Service Award on June 25th in recognition of his "outstanding contributions" as Secretary of the Atomic Energy Commission. Mr. Bender held that position for two and one half years, having previously headed the Division of Information Systems of the Administrative Office. The award was presented by Miss Dixy Lee Ray, former Chairman of the Commission.

The citation commended Mr. Bender for "facilitating the decision-making process of the Commission and for his assistance in performing many highly sensitive and essential missions for the Commissioners." ■■

## LEGISLATION

**Civil Service Retirement.** H.R. 5397, to provide for retirement after 30 years of service, has been favorably reported by the House Committee on Post Office & Civil Service. As reported, it would allow for retirement after 30 years regardless of age, but the amount of annuity would be reduced by 1/6th of 1% for each month that the annuitant is under the age of 55.

**Judicial Salaries.** Senator Aboutsk, a member of the Senate Judiciary Committee, has introduced S. 2040, which would provide a single 20% across-the-board increase in the salaries of judges and justices. The bill will also take the Federal Judiciary out of the quadrennial review of executive, legislative, and judicial salaries. S. 2040 is pending before the Senate Committee on Post Office and Civil Service.

**H.R. 7779** was introduced on June 10 by Congressman Whalen. This bill would provide a salary of \$41,000 for district judges and \$38,000 for full-time referees and \$19,000 for part time referees.

**Bilingual Courts.** The Senate has passed S. 565, to provide more effectively for bilingual proceedings in all courts. In the House of Representatives, H.R. 8314 was introduced by Congressman Badillo and referred to the House Judiciary Committee.

**Evidence Rules.** S. 1549, to amend the evidence rules, passed the Senate on June 19. The bill presents a recommendation of the Judicial Conference and would make it clear that non-suggestive lineup, photographic and other identifications made in compliance with the Constitution are admissible evidence.

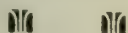
**Judicial Survivors Annuities Program.** On June 16, Senator McClean submitted a series of amendments to S. 12, which would amend the Judicial Survivors Annuity Act. Hearings on the bill, including amendments, are set for July 17.



## HOUSE PASSES CRIMINAL RULES AMENDMENTS

Three-Judge Courts. S. 537, a bill to eliminate the use of three-judge courts in all but reapportionment and civil rights cases passed the Senate on June 23.

**Madison County, Florida.** S.723, which would transfer Madison County, Florida from the Middle to the Northern District of Florida, has passed the Senate.



### SENATOR ABOUREZK INTRODUCES BILL TO RAISE JUDICIAL SALARIES

On June 26, South Dakota Senator James Abourezk introduced legislation which would raise judicial salaries 20 percent and tie all future increases to the cost of living.

The Abourezk bill, S. 2040, is the first judicial salary increase bill introduced in the Senate this session. A spokesman for Senator Abourezk said Montana Senator Lee Metcalf has agreed to co-sponsor the bill and Wyoming Senator Dale McGee, Chairman of the Senate Post Office and Civil Service Committee, has agreed to hold hearings on this bill as well as proposals to untie judicial salaries from those of Congressmen.

In a Senate floor speech following introduction of the bill, Senator Abourezk said the bill is designed to bring the level of judicial salary more into line with the rising cost of living.

In a letter sent to federal judges July 14, Senator Abourezk said, "I agree completely with The Chief Justice that federal judicial salaries, frozen since 1969, are wholly inadequate." The Senator pointed out, that even with his proposed twenty percent salary increase it could not totally reflect the buying power lost due to inflation over the last six years. An additional provision in the bill would allow an annual cost of living increase. Senator Abourezk's bill for an increase in judicial salaries echoed the statement of Senator Jacob K. Javits of New York who called for a judicial salary increase in a Senate speech last month. (See *The Third Branch*, June, 1975, p.1)

On June 23, the House of Representatives passed, by a vote of 372 to 1, the bill H.R. 6799, the Federal Criminal Rules Amendments Act.

Although a number of amendments were proposed on the floor of the House, only a very few were received favorably, with the exception of the amendments proposed by the House Judiciary Committee. All of the amendments proposed by the committee were adopted.

An amendment proposed by Congressman Drinan and adopted by the House amends rule 32 relating to presentence reports. Under the amended language, it is made clear that the defendant is entitled to see everything in the file, including information based upon a promise of confidentiality, but not the source of that information. Of course, where the mere inclusion of the information would reveal the source, the judge could deny access to that information.

The most controversial of the committee amendments — one which would require the court to either accept or reject the plea agreement of the parties, without discretion to modify the recommended sentence — was adopted by the House.

By a close vote of 216 to 201, the proposed revision of the rules to provide for the issuance of a summons instead of a warrant in the usual case was defeated, and the existing procedure of issuing warrants unless the U.S. Attorney requests that a summons be issued will continue to be followed.

An amendment by Mr. Hyde would have returned the pre-trial discovery procedures to those which now exist. Again by a very close vote, the position of the House Judiciary Committee, which provides for the notification as to names of witnesses only 3 days before trial, was upheld.

Other revisions of the rules proposed by the Supreme Court were adopted by the House Judiciary

Committee and incorporated in the bill as passed.

Rule 11, dealing with pleas was amended to permit a plea agreement to be disclosed to the court, or rejected by it, in camera upon a showing of good cause. Evidence of a plea of guilty later withdrawn, or of a plea of nolo contendere or offers thereof could be used later against a defendant in a trial for perjury or false statement prosecution. The advice given to the defendant prior to acceptance of his plea would include the advice required by *Boykin v. Alabama*, and the fact that his statements might later be used against him in a perjury trial if made under oath, on the record, and in the presence of counsel.

Rule 12.1 dealing with the alibi defense was recast by the Committee to provide that it will be triggered by the prosecution, rather than the defense, but also requires that the government turn over to the defendant the names of those witnesses that it would use to rebut the defendant's alibi witnesses.

Rule 15 was modified in several respects. The House Judiciary Committee, not wanting to encourage the use of depositions in contrast to having a live witness on the stand, restricted the proposed definitions of "unavailable." A witness unavailable due to his exemption from testifying on the ground of privilege, will not be considered unavailable within the meaning of the proposal permitting the use of depositions at trial. A further amendment makes provision for payment by the government for the cost of taking and transcribing a deposition for an indigent defendant.

As noted above, the provisions of Rule 16 relating to discovery of witness lists were amended to provide for notice only 3 days before trial.

The Senate Judiciary Committee has already held hearings on H.R. 6799 and early action is expected.





(FROM PRESIDENT pg 1)  
need is there, and legislation has been introduced in both the House and the Senate to provide I think it is 51 or 53 additional federal judges.

"I can assure you personally that I will do all I can to convince the Congress that action is required. I think all of us in this room recognize that you may have to make some division between one group and another in order to get it approved, but I think the overriding interest is in the need for judges.

"So, as far as we are concerned, we will work out with those that feel there should be some equal division-and I understand it-so that we can meet the needs of our federal court system.

"I think we also have to recognize there is a need for an increase in federal judicial salaries.

"Let me assure you that in the most discreet way the Chief Justice, without violating any Constitutional limitations, has talked to me on several occasions—has talked to a number of Members of the Congress and at his specific request, I got a group of the Democratic and Republican leaders to the White House along with people from the Executive Branch to again mention with emphasis the problems in the field of compensation for federal judges.

"So, you have a good advocate. We just have to find some way to get some action.

"Let me say this: In my crime message, which was submitted to the Congress several weeks ago, I strongly supported, as I think it is absolutely essential, legislation to expand the jurisdiction of federal magistrates.

"You know better than I that the expansion of that responsibility can be very helpful in alleviating some of the caseload problems in the federal judicial system.

"In addition, in this crime message, I did propose action on the scope and the process of Federal jurisdiction, including the range of diversity jurisdiction, the advisability of three-judge courts, possible avenues of Federal-State coopera-

tion and related proposals, all of which could be materially beneficial in reducing the caseload.

"Accordingly, in this process, I have requested a comprehensive review of Administration efforts on judicial improvements and an examination of the full spectrum of problems facing the Judiciary.

"Because the State courts are being equally, if not greater, taxed by special problems, I have recommended an extension of Law Enforcement Assistance Administration programs calling attention specifically to the financial and the technical assistance requirements of our State courts.

"The Administration is also aware of the need to consider the judicial impact of any new legislation, and I can assure you that we will examine the potential for litigation arising from any of our proposals.

"It has been my observation that too often Federal Laws have been passed without adequate consideration of their impact on the effect on our Federal court system.

"From its founding, the Nation has expected its courts to perform vitally important functions, and in recent years the Federal bench has wrestled with many of these controversial issues in our society.

"In fact, we are turning too often to the Federal courts for solutions to conflicts that should have been tackled by other agencies of the Federal Government, or even the private sector.

"We cannot expect the Judiciary to resolve and to balance all of our opposing views in our society. Neither can we rely on the courts as sole protector of our individual liberties.

"I think other agencies, or partners in the Federal Government, have an equal responsibility. We can't, in all honesty, put the full burden and total load on the Judicial system.

"The Judiciary is the Nation's standing army in defense of individual freedom, but all segments of our society—Government, business, labor, education—must work to see that the individual is not stifled."

## GOVERNMENT APPEALS FREE TRIAL TRANSCRIPT DECISION

The Solicitor General, acting on the recommendation of the Administrative Office, has filed a certiorari petition in the Supreme Court to review a decision giving indigent federal prisoners the right to a free trial transcript for possible use in preparing petitions for post conviction relief.

The decision of the Court of Appeals for the Ninth Circuit in *MacCollom v. United States* (decided August 2, 1974), held that an indigent federal prisoner, who had been permitted to proceed *in forma pauperis* for the purposes of his criminal trial, was entitled to obtain a transcript of his trial in order to assist him in preparing a post conviction motion under 28 U.S.C. § 2255, although no such motion had yet been filed with the district court.

By a two to one vote, the Court of Appeals departed from the precedent requiring a particularized showing of need for the specific portion of the transcript requested. The Court noted that 28 U.S.C. 753(f) authorizes the payment by the U.S. from appropriated funds of the fees for transcripts furnished in proceedings brought under section 2255 only if the trial judge or a circuit judge certifies that "the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal." It did not hold this section unconstitutional but stated that its decision in this case "would simply fill a constitutional deficit not addressed by the statute."

In its recommendation to the Department of Justice that a certiorari be sought, the Administrative Office said this decision may result in a substantial drain on the appropriated funds of the Judiciary used to pay transcript expenditure for indigent persons and would also greatly increase the demands on the official court reporters of the federal district courts for the preparation of transcripts. ■



# THE SOURCE

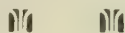
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of the Federal Judicial Center

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- The Case Against the Jury (a Brief Without Citations). Aron Steuer. 47 N.Y.S. B.J. 101 (Feb. 1975).
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- Federal Judges: To Whom Must They Answer? Thomas M. Boyd. 61 A.B.A. J. 324 (March 1975).
- LEXIS: A Progress Report. Jerome S. Rubin and Robin L. Woodward. 15 Jurimetrics J. 86 (Winter 1974).
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• Video Tapes in the Courtroom. John R. Martzell. 22 Fed. B. News 35 (Feb. 1975).

• Justices and Presidents; a Political History of Appointments to the Supreme Court. Henry J. Abraham, Oxford University Press, 1974.

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## BILL PROVIDING DEFENSE ATTORNEYS FOR JUDGES IS SUBMITTED

Acting upon the request of the Judicial Conference of the U.S., the Director of the Administrative Office of U.S. Courts has submitted legislation to Congress providing for the defense of judges and judicial officers sued in their official capacities. The litigation expenses would be paid to private attorneys who acted as defense counsel, by the Director of the Administrative Office.

In a letter to the House Speaker and the President of the Senate accompanying the proposed bill, the Director of the A.O., Rowland F. Kirks, said that "judges and other judicial officers are generally represented by the Department of Justice. . . However, there are circumstances in which it is inappropriate for the Department of Justice to provide such representation."

As an example, he mentioned a mandamus suit filed by the Department of Justice against a judge.

The proposed bill would enable the Judicial Conference to establish criteria and an administrative process to determine when representation should be furnished by private counsel vis-a-vis the Department of Justice, and to establish standards for payment of attorneys' fees and litigation costs in appropriate situations. 

## HOUSE APPROVES JUDICIARY APPROPRIATIONS

The House of Representatives June 27 approved H.R. 8121, the bill authorizing judiciary appropriations for Fiscal Year 1976 ending next June 30 and for the transition period from July 1 through September 30, 1976.

Senate action on the bill is expected shortly since hearings were held in the Senate late last month.

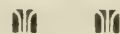
The House approved the full amount requested for judicial salaries, court-appointed counsel, juror fees, and salaries and expenses for both magistrates and bankruptcy referees.

In addition, the House approved 259 new positions including 16 deputy clerks for U.S. District Courts, nine special legal staff positions for the Ninth Circuit, nine senior staff law clerks for the U.S. Courts of Appeals but declined to approve a request for nine Deputy Circuit Executives.

With respect to the Administrative Office, the House approved 29 new positions and also provided that funds would be available on an annual basis for 42 positions approved in the second supplemental appropriation for 1975 to implement the Speedy Trial Act.

The Federal Judicial Center was granted budget authority for \$6.4 million of which \$2.4 million has been earmarked for COURTRAN II operations.

The House bill also includes \$64 million for space and facilities and \$4,570,000 for furniture and furnishings.



## The Third Branch

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts



# PERSONNEL

## Appointments

Anthony M. Kennedy, U.S. Circuit Judge, CA-9, May 30  
Dick Yin Wong, U.S. District Judge, D.Hawaii, May 30

## Nomination

Phil M. McNagy, Jr., U.S. District Judge, N.D. Indiana, June 24

## Elevation

William B. Jones, Chief Judge, U.S. District Court, District of Columbia, July 14

## Nomination

Richard D. Rogers, U.S. District Judge, District of Kansas, July 11

## Resignation

James A. Comiskey, U.S. District Judge, E.D. Louisiana, June 15

## Death

Thomas W. Swan, U.S. Circuit Judge, CA-2, July 13  
Walter H. Hodge, U.S. District Judge, District of Alaska, July 12

# GOVERNMENT calendar

Aug. 4-5 Judicial Conference Jury Committee, Lake Placid, N.Y.

Aug. 12-14 Judicial Conference Review Committee, Hilton Head, S.C.

Aug. 13-14 Judicial Conference Advisory Committee on Judicial Activities, Hilton Head, S.C.

Aug. 14-15 Judicial Conference Budget Committee, Washington, D.C.

Aug. 15 Judicial Conference Joint Committee on Judicial Code, Hilton Head, S.C.

September 9 Third Circuit Judicial Conference, Philadelphia, Pennsylvania

September 10-11 Second Circuit Judicial Conference, Buck Hill Falls, Pennsylvania

Sept. 25-26 Judicial Conference of The United States, Washington, D.C. (Note date changed)

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## THE THIRD BRANCH

VOL. 8, NO. 7 JULY 1975

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# The Third Branch

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Bulletin of the Federal Courts

VOL. 7, NO. 8

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

AUGUST 1975

## NINTH CIRCUIT CONSIDERS REORGANIZING ITS CIRCUIT CONFERENCE

In 1974 Chief Judge Richard H. Chambers appointed a Committee on Reorganization of the Circuit Conference and Conference Committees and directed the members to study the Circuit's Annual Conference and suggest possible methods to improve its purposes, content and operation.

The Committee held hearings in Seattle, Los Angeles, Phoenix, and San Francisco to hear the views of judges, private and government lawyers and law school deans. In addition, a questionnaire was sent to former participants and over one hundred returned them with detailed responses.

At the Ninth Circuit Conference held last month the Committee released its preliminary report and solicited comments from attendees. After reviewing the history of the Circuit Conference concept, the Committee found that there were three broad and interdependent purposes: administration, education, and social exchange. However, the Committee found that most questions of judicial administration as well as important areas of judicial education are relegated to the brief edges of the Conference while the social purpose, at the present time, appeared to be dominant.

The Committee said that the Conference "has fulfilled its statutory purpose only partially and sporadically. The reason for this failure is that the part the Circuit Conference is to play in the continuing effort to improve the administration of justice in the federal courts of the Circuit has not been kept clearly in mind in the organization of the Conference, in the representation and participation of the Bar, and in the determination of program content."

In addition, the Committee found that the Circuit Conference has been deficient in: (1) the rela-

(SEE NINTH CIRCUIT pg. 2)

### PROJECTS AND PLANNING UNDER WAY FOR THE JUDICIARY'S PARTICIPATION IN THE BICENTENNIAL CELEBRATION

Several twenty-six minute films dramatizing the role of the federal courts in the formative years of American life, and books and brochures outlining the history and functioning of all branches of the national judicial system, will be part of the Judiciary's celebration of the Bicentennial.

Co-Chairmen of the Bicentennial Committee are Chief Judge Clement F. Haynsworth, Jr., (CA-4) and Chief Judge Edward J. Devitt  
(SEE BICENTENNIAL pg. 8)

★ This issue contains a summary of significant opinions decided by the Supreme Court of the United States during the October Term, 1974. (See pg. 3)

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### PRESIDENT FORD SIGNS PAY BILL

On August 9, President Ford signed legislation which will increase the salaries of all federal judges, senior executives of all three branches of government, and all other employees covered by the federal pay comparability act.

The amount of the increase has not yet been set but is expected to range from a low of 5% to a high of 8.66%. The increase is effective October 1.

The Director of the Administrative Office of U.S. Courts will inform judges and other members of the federal judiciary of the exact amount of the pay increase when the information is available.

On August 29, President Ford asked Congress to restrict the amount of the pay increase to 5%. He told Congress, "The size of the proposed pay raise must be temporarily restrained for the economic well-being of the nation."



tionship of the Circuit Conference to the Circuit Council and the Judicial Conference of the United States; (2) the role of the District Court Judges in the Conference; and (3) the role of the Bar in the Conference.

The report pointed out that the Circuit Conference should play a "deliberative and advisory role" with respect to the Circuit Council. However, the Committee found that the functions of the Circuit Conference in relation to the Circuit Council have been almost totally ignored.

Turning to the role of the District Court Judges in the Conference, the Committee said that the Circuit Conference presents a unique opportunity for useful exchange among District Judges, and between them and the other elements of the administrative machinery of the courts (the Judicial Conference of the United States and the Circuit Council), as well as the Federal Judicial Center and the Administrative Office.

The Committee found that there was little recognition of the role that should be played in the Judicial Conference by the Bar of the Circuit and that the lawyer-delegates have not served as a conduit of information from the Bar to the Conference on the state of the judiciary in their districts.

The Committee recommended that steps be taken to make sure that the lawyer-delegates perform their intended function of informing the judges of deficiencies of the operations of the courts of the Circuit.

#### Composition of the Conference

The Committee closely analyzed the composition of the Ninth Circuit's 1974 Conference and found that Rule 16 of the Rules of the Ninth Circuit, which establishes the categories of invitees to the Circuit Conference, "does not necessarily produce lawyer-delegates who either actively participate or represent the Bar of the Circuit . . . .

[T]oo frequently, a Judge's choice of a lawyer-delegate has resulted from social and personal considerations unconnected with whether the invitee had contributions to make or interests relevant to the purpose of the Conference."

The Committee recommended that the size of the Conference be reduced and that the present 3 to 1 ratio should be limited to one non-judicial invitee to each Judge in the hope that this would produce a more conducive environment in which exchanges between lawyers and judges could take place. The Committee also recommends severely limiting the number of special guests who are invited primarily as a matter of courtesy and completely eliminating representatives from State Bar Associations since their role has been purely ceremonial. In addition, the number of representatives from accredited law schools should be cut. In deciding who should attend the Conference, the Committee recommended "three indispensable requirements:

(1) that the prospective delegate be involved in federal practice to some degree; (2) that the delegate be interested in the purposes and work of the Conference; (3) and that the delegate be willing and able actively to contribute to that end." The Committee recommended a selection mechanism for choosing lawyer-delegates. This mechanism would utilize local Bar Associations within each district which would nominate candidates from which a Committee of local judges could then select the lawyer-delegates. The Committee thought it might also prove productive to consider inviting members of non-legal professions to attend the Conference as non-voting participants. "Such attendance should help avoid certain forms of intellectual inbreeding as well as add a more worldly flavor to the conference. Accountants, psychiatrists, psychologists, criminologists, social workers, rehabilitation specialists and members of the working press could add a refresh-

ing dimension to discussions of various subjects."

#### Program Agenda

After reviewing what the other Judicial Circuits follow as their Conference agendas, the Committee recommended that a joint executive session of Circuit and District Judges be held on the first day of the Conference since it provides "a forum where the judges can engage in a frank and open exchange of ideas and experience in an informal atmosphere."

The Committee also recommended that the organization of the Conference be streamlined by eliminating the District Judges seminar and by integrating the topics which would normally appear on the District Judges seminar agenda into the general program of the Conference.

Beginning on the second day of the Conference a two-day general session would start and this session would include subject matter somewhat broader than that covered during the executive session. The Committee recommended that subject matter "should be chosen for its topicality, liveliness, and relevance to daily federal practice."

Of special value to the participants might be an annual presentation of the following: (a) A comprehensive review of United States Supreme Court decisions; (b) a comprehensive review and criticism of Ninth Circuit decisions; (c) the most currently litigated appellate issue facing the Circuit Court; the most currently litigated trial issue . . . facing the District Court. After reviewing the various alternative suggestions concerning the duration of the Conference the Committee said that the most attractive alternative is a three-day Conference consisting of both morning and afternoon sessions.

#### Leadership Organizations

The Committee recommended (1) a single Executive Committee should be in charge of all phases of the Conference; (2) each of

(SEE NINTH CIRCUIT p



**Schick v. Reed, Chairman, U.S. Board of Parole, 419 U.S. 256 (December 1974)**  
Petitioner who had been sentenced to death a court-martial for murder brought suit to

In this case the Supreme Court in vacating a court-approved districting plan reiterated the view that multimember districts should not be imposed upon a state in a legislative apportionment case unless there exists persuasive reasons, such as traditional state policy, to justify such districts. In addition the Court found that a population variance of 20% between the largest and smallest districts under the challenged District Court plan violated the one-man one-vote doctrine and was not justified by historically



significant state policy or unique features. Noteworthy in this case is the Court's clarification of the responsibility of a District Court when it undertakes to reapportion. The Court stated "it is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with a minimal population variance cannot be adopted."

**Train, Administrator, EPA v. City of New York, 420 U.S. 35 (February 1975)**

The presidential impoundment of federal funds to be allotted for municipal sewers and sewage treatment works under Title II of the Federal Water Pollution Control Act Amendments of 1972 was held to be unauthorized and contrary to congressional intent in providing in §205(a) of Title II that the sums authorized to be appropriate *shall* be allotted by EPA.

**Emporium Capwell Co. v. Western Addition Community Org. 420 U.S. 50 (February 1975)**

Although national labor policy greatly accords the highest priority to non-discriminatory employment practices, the National Labor Relations Act was held not to protect concerted activity by minority employees, who picketed their employer's store, to bargain with their employer over issues of employment discrimination, thereby bypassing their union which had initiated its contract grievance procedure with the employer over the employee's complaints.

**Gerstein v. Pugh 420 U.S. 103 (February 1975)**

A person arrested and held for trial under a prosecutor's information is constitutionally entitled to a judicial determination of probable cause before or promptly after arrest in order to be subjected to any significant pretrial restraint of liberty. Accordingly, the Court determined that Florida procedures by which a person could be arrested without a warrant, charged by information and then jailed without a judicial determination of probable cause were unconstitutional. The judicial probable cause determination, however, need not be a formalized adversary proceeding and need not require that appointed counsel be provided the accused.

The Court additionally noted that, while a detained person may challenge the existence of probable cause for his confinement, a conviction thereafter obtained will not be vacated for that reason.

**Drope v. Missouri 420 U.S. 163 (February 1975)**

A unanimous Supreme Court found that the failure of a trial court to order a psychiatric evaluation or make further inquiry on the question of a defendant's competence to stand trial, where there was some evidence of incompetence revealed in a pretrial psychiatrist's report and in the irrational conduct of the defendant during the trial, violated the defendant's right to a fair trial.

**NLRB v. Weingarten, Inc. 420 U.S. 251 (February 1975)**

An employer's denial of an employee's request to have her union representative present at an investigative interview regarding thefts from the employer which might result in disciplinary action constitutes an unfair labor practice prohibited under the National Labor Relations Act.

**Lefkowitz v. Newsome 420 U.S. 293 (February 1975)**

A state prisoner's right to federal habeas corpus relief is not precluded even though he pleaded guilty at the trial of the charges against him, if the state itself permits a defendant to raise certain constitutional challenges on appeal from a conviction based on a guilty plea.

**United States v. Biceglia 420 U.S. 141 (February 1975)**

The Internal Revenue Service has authority, says the Supreme Court, to issue a "John Doe" summons to a bank or other depository to discover the identity of a person who has had bank transactions suggesting possible liability for unpaid taxes.

**United States v. Wilson 420 U.S. 332 (February 1975)**

The double jeopardy clause does not prevent the Government from appealing a trial court's disposition of a post-verdict motion favorable to the defendant but which does not subject the defendant to a new trial. In this case after a jury verdict of guilty the District Court granted dismissal of the indictment for inordinate delay between the time of the offense and the indictment. The Supreme Court here held that the Government had a right to have such dismissal reviewed by the courts of appeals because in any event no new trial of the defendant would be necessitated.

**United States v. Jenkins 420 U.S. 358 (February 1975)**

The double jeopardy clause precludes the Government from appealing a District Court "dismissal" of an indictment and "discharge" of a defendant following a bench trial even where it is unclear whether the District Court resolved the issues of fact in favor of the defendant. If the Government were to prevail on appeal, further evidentiary proceedings going to the elements of the offense charged would be required.

**Serfass v. United States 420 U.S. 377 (March 1975)**

A government appeal is proper from a pre-trial order dismissing an indictment where no trial, in the sense of adducing evidence, had begun and thus no jeopardy had attached.

**Wood v. Strickland 420 U.S. 308 (February 1975)**

In this case the Supreme Court found that public school officials are entitled to a qualified

good-faith immunity from liability for damages for violating a student's constitutional rights. They are liable, however, if they take actions within the scope of their responsibilities which they know or should know violate a student's constitutional rights, or they act with a malicious intention to deprive a student of his rights. Good faith on the part of the school official will preclude the recovery of compensatory damages against him.

**Cox Broadcasting Corp. v. Cohn 420 U.S. 469 (March 1975)**

A newscaster's publication of a deceased rape victim's name, found among official court records related to the ensuing trial, violated a Georgia statute making it a misdemeanor to reveal the victim's name. In a suit for invasion of privacy brought by the victim's father the Georgia Courts held that a rape victim's name was not a matter of public concern and that the statute was a legitimate limitation on the First Amendment's right of free speech.

The Supreme Court reversed. A state cannot, consistent with the right of freedom of expression, impose sanctions on the publication of information obtained from judicial records open to public inspection. The commission of a crime, prosecutions thereby resulting and related judicial proceedings are matters of public concern which the press has the responsibility to report. Thus, the right of privacy limited by the public's right to know and the press's right to publish matters of public record and of public concern.

**Burns, Commissioner v. Alcala 420 U.S. 575 (March 1975)**

The term "dependent child" under the federally sponsored program of Aid to Families with Dependent Children (AFDC) does not include unborn children so that states receiving Federal funds are not required to offer welfare benefits to pregnant women for their unborn children.

**Southeastern Promotions Ltd., v. Conrad 420 U.S. 546 (March 1975)**

A municipality's denial of the use of a public theatre for a musical production based on content constitutes prior restraint tolerable only where the censor has the burden of initiating judicial proceedings and of showing that material is unprotected speech. Furthermore, any restraint imposed before judicial review must be brief and done only to preserve *status quo*. Judicial determination must be assured. Here the refusal of the use of a public theatre for a showing of "Hair" was not safeguarded by the requisite procedures, and producer's First Amendment rights of expression through drama were violated.



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## RESTRAINING THE LAWYERS

BY JOSEPH KRAFT

A becoming modesty characterizes the spirit of the Supreme Court as it reaches the end of another term. Special arrangements have apparently been made to remove public doubts that the uncertain health of Justice William Douglas may be playing a decisive role in the work of the court.

The major decisions have been dominated by a sense that the legal process is an exceedingly imperfect instrument for settling acute social problems. It is entirely fitting that the last day of this term saw a decision to uphold the right of defendants not to have a lawyer.

The arrangements made with respect to Justice Douglas are a matter of surmise. It is known that he suffered a stroke and has been receiving therapy in New York. It is also known that he has participated in many decisions since his illness.

But there has been no 5 to 4 decision in which Justice Douglas voted with the majority. An unusually large number of cases, including one testing the death penalty, have been held over for reargument next term. It seems clear that the Justices have an understanding whereby they will postpone any decisions in which Justice Douglas would be the swing vote.

The philosophical tone of the court is in keeping with that commonsensical, collegial decision. In the term now ending significant decisions were rendered in two areas of acute social conflict—the environment and civil rights.

The environmental issue came to the surface in the Alyeska case. The wilderness Society and some other environmental groups won an injunction against the consortium known as the Alyeska Service Co., which is building the Alaska Pipeline. The Consortium was required to get an environmental permit before proceeding with construction.

The environmental groups then sought, and were granted in the lower courts, a ruling which obliged Alyeska to pay their legal fees. The basis for that claim, which goes against a general rule that does not accord legal fees to winning parties, was that the environmentalists were acting as lawyers for the public interest.

The Supreme Court rejected that argument in a 5-2 decision. The majority felt that the claim of the environmentalists to represent the public interest had to be validated by the Congress, not the courts. "It appears to us that the rule suggested here," Justice Bryon White wrote in the majority opinion, "would make major inroads on a policy matter that Congress has reserved for itself."

The civil rights issue came to the surface in the Richmond annexation case. In 1970, the city of Richmond, Va., annexed the adjacent town of Chesterfield. As one result, the proportion of blacks in Richmond was reduced 52 percent to 42 per cent.

The annexation was questioned by civil rights groups on the grounds that it was designed to dilute the black majority in Richmond and was there-

fore an infringement of the right to vote. The Supreme Court sent that case back to the lower courts for further hearings on the facts.

But the majority strongly questioned the plaintiff's arguments that denial of majority status in the city was denial of the right to vote. The 5-3 decision against, written by Justice White, stipulated that "a reduction of a racial group's relative political strength in the community does not always deny or abridge the right to vote."

The upshot of the decisions is to apply a gentle braking action against a development which has been accelerating for the past few years. Reform groups egged on by activist lawyers have been using the courts to enforce social actions which they could not push past duly elected bodies.

But the fact is that the court system does not offer a good way to settle basic social issues. Judges and lawyers are poorly equipped to draw school districts and figure out the right trade-off between the interest in cheap power and the interest in clean air.

Not only because they lack the technical knowledge. The true disqualification is that lawyers are highly mobile individuals who tend to work in very small groups, if not in isolation. They are the last people to try to figure out arrangements whereby large groups bound together in collegial relations live together. So it is fine to have the Supreme Court applying some restraints, and it would be better still if the lawyers restrained themselves.

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# **SUPREME COURT HISTORICAL SOCIETY TRUSTEES NAME BOARD OF DIRECTORS**

The newly formed Supreme Court Historical Society announced August 4 that donors thus far have contributed \$142,000 toward the group's varied objectives.

To date the largest contribution has come from Mrs. Gwendolyn D. Cafritz who made the grant in behalf of the Morris and Gwendolyn Cafritz Foundation.

Following is a statement by Mrs. Elizabeth Hughes Gossett, daughter of the late Chief Justice Charles Evans Hughes, and recently elected as the first President of the Society.

"I am happy to report that our initial invitation of support for the Supreme Court Historical Society has brought in \$142,000 in life and annual memberships from friends in the judicial, legal, academic and other walks of our national life.

"I am especially pleased to announce the contribution from the Morris and Gwendolyn Cafritz Foundation of \$125,000 making Mrs. Cafritz first of the Benefactors of the Society, and a life member. Mrs. Cafritz's generous donation has made possible the establishment of an office for our Society in suite 400 at 1629 K Street, N.W., Washington, D.C. 20006, and will provide funding for other projects of the Society.

"Other very notable contributors have been Samuel C. Johnson, President of the Johnson's Wax Fund, Inc., and Robert T. Stevens for the Fanwood Foundation, both for \$5,000 each and Sponsors of the Society. In addition new members of the Sustaining, Contributing, Associate, Individual and Academic Categories have added a further \$7,000.

"These generous donations provide a most encouraging start for the work of the Society in providing for the Supreme Court and the Federal judiciary the same sort of support which the historical societies of the White House and Capitol have so long and so well given to the two other branches of the gov-

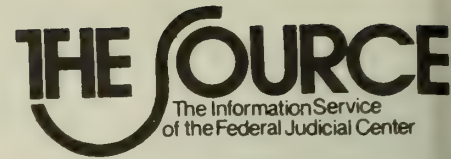
ernment. With these gifts we are able to move forward promptly now on the many types of work which lie ahead for us. We will be contacting descendants of all 100 Justices in the Supreme Court's history to invite them to provide papers, records and other appropriate memorabilia for display in the halls of the Supreme Court and also as an invaluable resource for scholars.

"We will stand ready to provide assistance to present Justices in the permanent preservation of their own documents and effects. We will be actively at the service of all aspects of the federal judiciary in the determination that unique memorabilia of an important aspect of our national life shall not be lost to future generations because of neglect on our part.

"The initial response to the announcement of our Society's formation has been most heartening. In our mailings thus far we have introduced ourselves to 40,000 members of the Supreme Court Bar, the federal bar, the legal and academic professions and other members of the general public. In coming weeks we will contact thousands of other persons. Everyone is welcome to help. Even at this early moment in our young Society's life, I am satisfied that a long-neglected part of our national work—the systematic preservation of Supreme Court and federal judicial memorabilia—will be undertaken properly now."

Four vice-presidents working with Mrs. Gossett are William P. Rogers, Robert T. Stevens, Sol M. Linowitz, and Earl W. Kintner.

Mr. Justice Tom C. Clark, Supreme Court of the United States (Ret.), is Chairman of the Society's Board of Trustees. Mrs. Hugo L. Black, widow of the Justice, is Secretary. Vincent C. Burke is Treasurer.



- An Administrator's View of the Supreme Court. Mark W. Cannon. 22 Fed. B. News 109 (April 1975).
- The Compleat Advocate. Rt. Hon. Lord Widgery. XLIII Fordham L. Rev. 909 (May 1975).
- Criminal Justice in the 21st Century: Probabilities and Possibilities. William J. Mathias and Gene Stephens. 14#3 Ct. Rev. 2 (1975).
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## OPINIONS from pg. 4)

**Huffman v. Pursue, Ltd.**

420 U.S. 592 (March 1975)

The federalism and comity principles expressed in *Younger v. Harris*, 401 U.S. 37, which require that a federal court not intervene, absent exceptional circumstances, in pending state criminal proceedings, were held to be equally applicable to a state civil proceeding, not yet final, in the nature of a nuisance action to order the closure of a public theatre and the forfeiture of personal property therein used. Because the District Court had not applied the *Younger* rule but rather considered the federal suit on its merits, the Supreme Court remanded the case for a determination of whether the state proceedings had been conducted with an intent to harass the accused or in bad faith, or of whether the challenged nuisance statute was flagrantly and patently unconstitutional. Absent these factors the federal suit should not have been entertained.

**Oregon v. Hass**

420 U.S. 714 (March 1975)

The Supreme Court held in this case that exculpatory information provided by a suspect, in police custody on route to the police station, who has requested the services of a lawyer can be used solely for impeachment purposes once the suspect takes the stand at trial and testifies contrary to such information.

**Weinberger, Secretary of HEW v. Wiesenfeld**

420 U.S. 636 (March 1975)

Under the Social Security Act survivors' benefits based on a covered man's earnings are granted to both his widow and his dependent children whereas survivors' benefits based on the earnings of a deceased wife and mother are provided only to her minor children and not the widower. Because this gender-based distinction discriminates against covered women wage earners by providing them less protection for their survivors than is provided for men, it violates the equal protection of the laws guaranteed by the Fourteenth Amendment.

**Austin v. New Hampshire**

420 U.S. 656 (March 1975)

New Hampshire which does not tax its residents' domestic-earned income imposed a tax on non-residents' income earned in New Hampshire. This commuters' tax further exempted from tax the income of New Hampshire residents earned outside the State. Since this tax fell exclusively on nonresidents' incomes and was not offset by taxes imposed upon residents, the Supreme Court held it to be an unconstitutional infringement of the Privileges and Immunities Clause requiring substantial equality of treatment between citizens of the taxing state and non-resident taxpayers.

**Schlesinger v. Councilman**

420 U.S. 738 (March 1975)

A federal court has subject matter jurisdiction, assuming other jurisdictional prerequisites are met, to determine whether a court-martial is acting within its scope of responsibility notwithstanding Article 76 of the Uniform Code of Military Justice which provides that all acts of court-martials are final and binding on all courts. Yet, when court-martial charges have been made against a serviceman, the federal courts should refrain from intervention by injunction or otherwise in the military court system unless the serviceman can show the possibility of irreparable harm.

**Hill, Attorney General of Texas v. Stone**

421 U.S. 289 (May 1975)

In this case the Supreme Court found that a Texas procedure, which disenfranchised persons otherwise qualified to vote from participation in a general obligation bond issue election, a matter of general interest, because they had listed no property, real or personal, for tax purposes, served no compelling state interest and therefore violated the Equal Protection Clause of the Fourteenth Amendment.

**Alyeska Pipeline Service Co. v.****Wilderness Society et al.**

421 U.S. 240 (May 1975)

In a 5-2 decision the Supreme Court held that associations, which had instituted suit to enjoin the issuance of Government permits for the trans-Alaska oil pipeline, could not recover attorneys' fees not provided by statute on a "private attorney general" theory. Under the "American Rule" only Congress through statutory authorization, and not the courts, can authorize recovery by a prevailing litigant of attorneys' fees in federal litigation.

**Breed, Director v. Jones**

421 U.S. 519 (May 1975)

A unanimous Supreme Court found that the state prosecution of a 17 year old as an adult, after an adjudicatory hearing and finding in the Juvenile Court that he had violated a criminal statute but was not fit for treatment as a juvenile, violated the Double Jeopardy Clause. Once testimony had been taken at the juvenile court hearing jeopardy attached. Even though the accused faced the possibility of only one punishment, he was compelled to defend at two trials. This decision thus requires that transfer hearings to ascertain if a juvenile should be tried as an adult be conducted before an adjudicatory hearing in the juvenile court.

**Eastland v. United States Servicemen's Fund**

421 U.S. 491 (May 1975)

In this case the Supreme Court decided that a federal court could not enjoin the issuance by Congress of a subpoena *duces tecum* directing a bank to produce the bank records of an organization claiming a First Amendment privilege status for the records on the grounds that they were the equivalent of confidential membership lists. Because the subpoena was found

to be within the legitimate legislative sphere of investigation, the Speech and Debate Clause provided absolute immunity to members of the Congress and their staff for the issuance of the subpoena. Such subpoena was not subject to question "in any place," including private civil suits alleging abuse of congressional powers and a violation of First Amendment rights.

**Goldfarb v. Virginia State Bar**

421 U.S. \_\_\_\_\_. (June 1975)

In an 8-0 opinion the Supreme Court struck down minimum fee schedules prepared by bar associations for enumerated types of legal services as constituting illegal price-fixing, violative of §1 of the Sherman Act. The Court found no exception to the Sherman Act for the "learned professions" and concluded that the performance of legal services in exchange for money was "commerce."

**United States v. Hale**

422 U.S. \_\_\_\_\_. (June 1975)

The federal defendant in this case was, following his arrest, taken to the police station where, advised of his right to remain silent, he made no response to an officer's query about money found on his person. At trial he took the stand and gave alibi testimony. The prosecution attempted to impeach his alibi by having him admit that he did not offer this exculpatory information when arrested. At trial the judge struck this admission but did not declare a mistrial. Under these circumstances the Supreme Court held it was improper to use the defendant's silence as an impeachment device for it had no significant probative value. Because of intolerable prejudice to the defendant, the Court exercised its supervisory power over the lower federal courts and ordered a new trial.

**Hicks v. Miranda**

422 U.S. \_\_\_\_\_. (June 1975)

Where state criminal proceedings are begun against federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have occurred in the federal court, the federal court should dismiss the complaint absent extraordinary circumstances of irreparable harm to the federal plaintiffs. In this case the Supreme Court clarified that cases coming before it under its obligatory appellate jurisdiction, but which are nonetheless treated summarily such as by dismissal for lack of a substantial federal question, are decisions on the merits and as such are binding on lower courts.

**Warth v. Seldin**

422 U.S. \_\_\_\_\_. (June 1975)

In an action challenging allegedly exclusive zoning practices designed to prevent low and moderate income persons from residing within a town, the Supreme Court held that in order to establish standing a plaintiff must allege specific, concrete facts demonstrating that the exclusionary zoning practices harm him and that he would be benefitted tangibly by the courts' intervention.

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**Bigelow v. Virginia**  
421 U.S. \_\_\_\_\_. (June 1975)

The appellant had published in his Virginia weekly newspaper a New York City advertisement announcing low-cost services in arranging placements in accredited hospitals and clinics for women with unwanted pregnancies. He was convicted of circulating a publication promoting abortion. The Supreme Court found that advertising as speech does have First Amendment protection even though it is a paid commercial medium. Because this ad contained information of potential interest to various members of the public, its publication could not be criminalized and Virginia could not regulate what its citizens read about perfectly legal activities in another state. The conviction was reversed.

**United States Citizens v. Southern National Bank**  
422 U.S. \_\_\_\_\_. (June 1975)

In a 6-3 decision the Supreme Court found no violation of §7 of the Clayton Act, which prohibits acquisitions that lessen competition, in the practice of a major bank to acquire formerly operated *de facto* branch banks as official branches, since these banks were all begun initially through sponsorship of the major bank.

**Erznoznik v. City of Jacksonville**  
422 U.S. \_\_\_\_\_. (June 1975)

A majority of the Supreme Court, three judges dissenting, found that a municipal ordinance making it a public nuisance and a punishable offense for a drive-in theatre to exhibit films containing nudity on a screen visible in a public street or place was facially invalid. The ordinance's overbroad censorship, purely on the basis of content without reference to context or purpose, was unjustified either as a measure to protect juveniles, as a traffic regulation, or as a guarantee of the privacy interest of passersby.

**Meek v. Pittenger, Secretary of Education**  
421 U.S. 349 (May 1975)

Pennsylvania's provision of auxiliary services, such as counseling, testing, remedial learning services, and speech and hearing therapy, to children enrolled in non-public elementary and secondary schools, which were primarily religious in nature, were held to violate the Establishment Clause of the First Amendment. The loan of instructional materials, other than textbooks approved for use in the public schools, also was found unconstitutional because it substantially advanced religious activity.

**United States v. Nobles**  
422 U.S. \_\_\_\_\_. (June 1975)

Defense counsel in a criminal trial sought to impeach the credibility of key prosecution witnesses by testimony of a defense investigator regarding statements he previously had obtained from those witnesses. The Supreme Court held that it was properly within the District Court's discretion to compel the defense to reveal relevant portions of the investigator's

report for the prosecution's use in cross-examining him even though the report itself was not introduced as evidence and notwithstanding claims, found to be meritless, of compelled self-incrimination and infringement of the defense attorney's work product.

**Albemarle Paper Co. v. Moody**  
422 U.S. \_\_\_\_\_. (June 1975)

Here the Supreme Court held that under Title VII of the 1964 Civil Rights Act as later amended back pay should under most circumstances be awarded employees unlawfully discriminated against by their employer regardless of a lack of bad faith on the part of the employer. The Court further struck down employment tests which the employer failed to show were manifestly related to job-performance ability, given the initial finding that such tests selected applicants of a racial pattern significantly different from that of the original pool of applicants.

**United States v. Peltier**  
422 U.S. \_\_\_\_\_. (June 1975)

In this case the Court rejected retroactive application of an earlier decision, **Almeida-Sanchez v. United States**, 413 U.S. 266, invalidating warrantless "border" searches twenty-five miles from the Mexican border where no probable cause existed. The Court, over a dissent forecasting the complete demise of the exclusionary rule, concluded that there was no violation of the principles of the exclusionary rule because the agents involved in this case, acting prior to the **Almeida-Sanchez** case, had no knowledge or reason to know at the time of the challenged arrest that their acts were unconstitutional. They were acting in reliance on long standing legislative and administrative practice and judicial approval.

**O'Connor v. Donaldson**  
422 U.S. \_\_\_\_\_. (June 1975)

In a unanimous opinion the Supreme Court ruled that a State may no longer confine, against their will, mentally ill but harmless persons who receive only custodial care and who could survive safely in freedom, living by themselves or with others. Officials who violate this rule may be liable for damages. The respondent in this case had been civilly committed and confined almost 15 years without treatment as a mental patient although non-dangerous and capable of self-sufficiency with the aid of his willing family. His confinement was held to violate his civil right to liberty. The case was remanded for a determination as to whether the hospital administrator knew or should have known that he was violating the patient's rights or if he acted maliciously to deprive the patient of his freedom, which facts, if true, would make him liable for damages.

**Twentieth Century Music Corp. v. Aiken**  
422 U.S. \_\_\_\_\_. (June 1975)

Broadcasting a licensed radio station's programs over public speakers in a fast-food restaurant is not an infringement of the copyright holder's exclusive right to *perform* the work publicly.

**Faretta v. California**  
422 U.S. \_\_\_\_\_. (June 1975)

A 6-3 majority of the Supreme Court here found that the Sixth Amendment guarantees to a criminal defendant the right to represent himself if he so desires. This right of self-representation permits a defendant to stand trial without an attorney if he voluntarily and knowingly waives his right to such counsel.

**Brown v. Illinois**  
422 U.S. \_\_\_\_\_. (June 1975)

A criminal defendant who had been arrested without probable cause and without a warrant made two inculpatory statements while in custody but after having been given the warnings required by **Miranda v. Arizona**, 384 U.S. 436. The Supreme Court found that the mere giving of the **Miranda** warnings did not dissipate the taint of the defendant's illegal arrest and render admissible statements given after the arrest.

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(BICENTENNIAL from pg. 1)  
(Dist.-Minn.). Chief Judge Howard T. Markey (CCPA) is Projects Coordinator.

Chief Justice Warren E. Burger served as acting chairman until August 1 when permanent nominations were made.

The Judiciary's part in the national observation began March 7-8 at the semi-annual meeting of the Judicial Conference of the United States. The Chief Justice was authorized to name a committee for the celebration and did so after the House of Representatives approved funds June 26. Action is needed by the Senate before a specific appropriation is made but meanwhile extensive preparations have begun. These were decided upon July 7 at the first meeting of the Judiciary Bicentennial Committee. Another meeting of the committee will draw further plans early in September in time to report to the next session of the Judicial Conference the month at the Supreme Court.

These are some of the projects which are underway:

1. Films suitable for use on television, in schoolrooms, and at meetings of interested groups. Present plans call for five films re-enacting early cases of the Supreme Court and of the district court system.

(SEE BICENTENNIAL pg. 1)



during the John Marshall era which illustrate fundamental American judicial principles. Professor William F. Swindler, an historian of the Supreme Court, and Dr. Mathias von Brauschitsch, executive producer of WOED-TV in Pittsburgh, who has done a dozen similar films for the National Geographic Society's celebration of the Bicentennial, are working on scripts and hope to begin filming by the end of this year. The production schedule calls for films to be available by mid-1976. The instructions to those at work on the project are to produce films which will be of enduring value and thus of use long after the national commemoration ends.

One possibility is that a ninety-minute television show, suitable for use on educational TV, will be drawn from the separate episodes.

**2. Histories of each of the federal courts.** Each Circuit has been asked to draw up a history of its courts. Still to be determined is whether there will be one volume for all the federal courts or a separate one for each circuit.

**3. A single popularly written volume** describing the role of the federal judiciary, past and present. A writer will be commissioned to write a book for use by secondary schools and civic groups and bar associations.

**4. Brochures.** The Bicentennial Committee will also consider publishing a series of booklets describing such facets of the federal judiciary as the jury system, United States magistrates, bankruptcy judges, probation officers, district courts, circuit courts of appeals and the Supreme Court.

**5.** An additional possibility is the publication of a *Biographical Directory* of the federal judiciary from the time of its inception. Congress has something similar and there is a great amount of information about judges up to the 1890's but the Administrative Office of the United States Courts has only

sparse data on judges of this century.

Among the cases which may be chosen for dramatic reenactment on film are these:

- **The Aaron Burr Trial (1807)** in two parts. Such a pair of films would show John Marshall as Chief Justice sitting in the district court with Judge Cyrus Griffin. The films could make two points: the right of the courts to demand evidence needed by a defendant even when the President himself held the evidence (Thomas Jefferson in this case); and the role of the courts in protecting individual rights and insisting on due process (the courts insisted here that two witnesses to an overt act be produced by the government if Burr were to be found guilty of treason).

- **Marbury v. Madison (1803).** The film would make the point that the co-equal and independent judicial branch has the power to review legislative enactments challenged as inconsistent with the Constitution.

- **Gibbons v. Ogden (1824).** This case shows the importance of the Commerce Clause giving the States a "common market" nearly two centuries before Europe achieved something similar.

- **McCulloch v. Maryland (1819) or U.S. v. Peters (1809).** These cases demonstrate that when the national sovereignty discharges a Constitutional power no state action may interfere.

Justices and judges who have been invited to serve on the Bicentennial Committee include:

The Chief Justice, Associate Justices William J. Brennan, Jr., Byron R. White and Harry A. Blackmun of the Supreme Court of the United States, and Roger Robb (CA-DC), Bailey Aldrich (CA-1), Henry J. Friendly (CA-2), Edward Dumbauld (W.D.-Pa.), Clement F. Haynsworth, Jr., (CA-4), Alexander A. Lawrence (S.D.-Ga.), Wade H. McCree, Jr., (CA-6), John S. Hastings (CA-7), Chief Judge Edward J. Devitt (Dist.-Minn.), James M. Carter (CA-9), Arthur J. Stanley,

Jr., (Dist.-Kan.) and Chief Judge Howard T. Markey (CCPA).

The aim of the Judiciary Bicentennial Committee, as adopted at the Aspen meeting, "is to portray the history and significance of the Judicial Branch of the United States Government, and its unique Constitutional role as one of the coordinate branches... [and] the mission shall be carried out through communication media, educational films, the preparation of an authoritative written portrayal of the federal court system and descriptive booklets on particular facets of the operation of the judicial system."

#### (NINTH CIRCUIT from pg. 2)

three major classes of members (Circuit Judges, District Judges, lawyer-delegates) should be represented; (3) the Committee should change annually, yet maintain continuity.

"The Executive Committee should consist of eleven members: three Circuit Judges, three District Court Judges, and three lawyer-delegates, serving staggered three-year terms with the Chief Judge of the Circuit and the Circuit Executive as permanent members," the Committee recommended.

#### Circuit Conference Committees

The Committee said there were thirteen Committees which may be considered part of the Ninth Circuit Conference but that the Committee's system should be restructured. The Committee recommended that the standing committee system be discontinued and that all other committees with the exception of the Executive Committee should be created on an *ad hoc* basis and given a specific task to perform. In addition, a Committee on Committees should be organized to oversee the creation and operation of these *ad hoc* committees.

#### Financing

After reviewing the various techniques which the other Circuit Conferences used to finance their Conferences, the Committee recommended (SEE NINTH CIRCUIT pg. 10)



# aoosfjc calendar

Aug. 27-28 Judicial Conference  
Criminal Rules Committee,  
Washington, D.C.

Sept. 3 Judicial Conference Budget  
Subcommittee, Washington,  
D.C.

Sept. 4-5 Judicial Conference Bud-  
get Committee, Washington,  
D.C.

Sept. 5-6 Workshop for District  
Judges of CA-10, (Juror  
Utilization/Federal Rules of  
Evidence), Co-Sponsored by  
the Federal Judicial Center  
and National Conference of  
Federal Trial Judges, Salt  
Lake City, Utah

Sept. 9 Third Circuit Judicial Con-  
ference, Philadelphia, Pa.

Sept. 10-11 Second Circuit Judicial  
Conference, Buck Hill Falls,  
Pa.

Sept. 15-19 Orientation Seminar  
for Probation Officers, Los  
Angeles, Calif.

Sept. 22-27 Seminar for Newly Ap-  
pointed Bankruptcy Judges,  
Washington, D.C.

# PERSONNEL

## Elevation

John D. Larkins, Jr., Chief Judge,  
U.S. District Court, E.D.N.C.,  
Aug. 2

## Confirmation

Richard D. Rogers, U.S. District  
Judge, D.Kan., July 31

## Nominations

Clarence A. Brimmer, Jr., U.S.  
District Judge, D.Wyo., July 23  
Terry L. Shell, U.S. District Judge,  
E.&W.D.Ark., July 25

Sept. 22-26 Tenth National Semi-  
nar for Newly Appointed  
Bankruptcy Judges, Wash-  
ington, D.C.

Sept. 25-26 Judicial Conference of  
the United States, Washing-  
ton, D.C.

Sept. 25-27 Conference for Circuit  
Executives, Washington,  
D.C.

Sept. 27 Meeting of the Circuit  
Chief Judges, Washington,  
D.C.

Sept. 29-Oct. 3 Advanced Seminar  
for Probation Officers,  
Philadelphia, Pa.

(NINTH CIRCUIT from pg. 9)

mended that Conference fund-  
should be obtained from three  
sources: (a) Administrative Office  
contributions; (b) registration fees;  
(c) surcharges on ticket sales for  
social events.

## Social Activities

The Committee recommended  
that the annual banquet should be  
the primary social event of the Con-  
ference and that it should be held  
on the last evening preceded by a  
first-class reception.

## Location of the Conference

The Committee said that the  
weight of opinion seemed to be  
that they hold the Conference in an  
isolated place to foster greater  
interplay among those attending.  
They believe that a retreat-like  
atmosphere is preferable.

## Date of the Conference

The Committee said that most  
of the other Circuit Confer-  
ences were usually held in the spring with  
three each held in May, June, and  
July. The Committee recommended  
that consideration be given to  
holding the Ninth Circuit Con-  
ference in spring or early fall.

*THE THIRD BRANCH*  
VOL. 7, NO. 8 AUGUST 1975

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SEPTEMBER 1975



Chief Justice Warren E. Burger presenting his Bicentennial Address in Salt Lake City, Utah.

## SENATE FAILS TO OVERRIDE PRESIDENT'S PAY PROPOSAL

By a vote of 53 to 39, the Senate September 18 failed to pass the resolution of Senator Metcalf of Montana which, in effect, asked the Senate to reject the alternative pay proposal submitted August 29 to Congress by President Ford.

The President had asked Congress to limit salary increases to 5% on inflationary grounds despite the fact that both the Office of Management and Budget and the Civil Service Commission had recommended that Congress increase salaries of most white-collar federal officials—including judges and senior executives—by 8.66%.

As a result, if the House of Representatives fails to act by the end of September—a move Congressional leaders say is likely—the

(See PAY page 4)

## Chief Justice Presents Bicentennial Address

Chief Justice Warren E. Burger, in a national address at the opening of the Utah Bicentennial Celebration, outlined the "Independence of our Freedoms" and emphasized the tremendous importance which the Constitution has had, and is continuing to have, on American life.

The Chief Justice said that the Declaration of Independence is "One of the most momentous political documents in our history" because it not only enabled us to sever our political ties with England but served as a guide for the men who framed the Constitution.

(Following are excerpts from the Chief Justice's Bicentennial Address. A full text is available from the Federal Judicial Center Information Service).

"The Constitution that implemented the Declaration made our country the first nation in history to establish a system of government under a written document by which the people voluntarily delegated powers to a central government, organized with an ingenious system of three divided and separated departments. This mechanism provided checks and balances on governmental power which, in turn, released the creative powers of a whole people and encouraged diversity and enterprise so they could shape their future in ways that seemed best to them. . . .

"Three factors aided the American Experiment in a new kind of government: first, our geographical isolation in a rich, undeveloped continent far removed from the quarrels of Europe; second, the uniqueness of the institutions we created; and third, the personal

qualities of the people and their leaders. There is no parallel in history of three million people producing such a galaxy of remarkable leaders as those who drafted the Declaration and the Constitution. . . .

"What was it that we had, then, that enabled us in less than 200 years to surpass those two countries [Russia and China] in universal education, in national unity and in the standard of living?

"It was not simply independence from the mother country and the new status as a sovereign nation. Far more important than the independence itself was the freedom of each person to shape an individual future and in doing that to shape the course of the nation itself. That kind of freedom, unique in human history, unleashed the latent talents, the energies, and the creative abilities of three million

(See ADDRESS page 2)



(ADDRESS from page 1)

hardy people while at the same time the equally intelligent, equally industrious, equally talented people in these two other countries remained in the bonds of the past...

"As you begin your observance of the Bicentennial, it may be appropriate to examine, briefly, six areas of freedom that flowed from independence—new kinds of freedom for each integral part that makes up America.

"**FIRST.** The three branches of our national government must each remain strong, co-equal, and independent of the others, but we should always remember that, even though independent, they were intended to be coordinate as well as co-equal. The idea of coordinate clearly implies that the separate powers must be harmonized into a workable whole.

"**SECOND.** The 50 states cannot exercise leadership in a national sense, but this does not mean they should not be allowed the independence and freedom that was plainly contemplated by the concept of federalism.

"A complex of economic, social and political problems in the modern world calls for close cooperation between the national and state governments, based on the reality that those who are elected to state office derive their authority from precisely the same voters—and usually on the same ballot—as those sent to Washington to formulate national policy. The infinitely complicated national programs ordained by Congress are administered by great departments, usually under regulations drafted by those departments, with hundreds of thousands of staff members in whose hands lies much of the real power of day-to-day decision and policy-making.

"As we begin the third century of independence, then, one task in our federal-state relationships is to re-examine the practices of our federalism and governmental machinery, which should be reviewed from time to time.

"**THIRD.** The great institutions of America, the churches, colleges, universities, museums and hospitals that grew under state and private control, have no parallel anywhere in the world. Their contribution to research, invention, culture, enlightenment and health is beyond measure. Over the past 40 years or more, economic pressures have led to a growing dependence by many of them on nationally administered, federally financed programs. The genius of these diverse organizations, however, arose from their independence and individuality for we know that creative development has never flowered under rigid uniformity. Together these independent institutions opened floodgates of knowledge and awareness of our world, and stimulated invention and technology released by this new kind of freedom of the mind and spirit. They made possible the most productive farms and ranches in the world and the most innovative and efficient factories whose products went into the world markets on a scale unknown before that time. . . .

"Every institution of government must always be open to examination and none deserves to be continued without change, unless it can withstand periodic examination.

"**FOURTH.** Freedom of speech and press has been a major factor in our development. In the formative years from at least 1770 onward, free speech from pulpits, platforms, and open air meetings flourished. At the same time there was a vigorous exercise of freedom of the press both by regular newspapers, and by the great output of pamphlets, many of them authored by those who signed the Declaration and later the Constitution.

"Without free speech and a free press, it is doubtful whether the people would have been ready to support the separation from England or whether the Constitution would have been ratified. Even those editors who opposed ratification of the Constitution generally tended to cover the delegates so that the people understood the

issues. At every major turning point for 200 years, the power of free speech and a free press has made itself felt on the great issues, and the independence of each element in our social and political order has been preserved by open debate. The independence of our vital institutions, public or private, could not have survived without the protections of the First Amendment.

"**FIFTH.** Nowhere in the Declaration or in the Constitution do we find any reference to the crucial part that an independent legal profession plays in the very ideal of freedom, because it was taken for granted. The fundamental principles had been established in England and was accepted in America. The model for independence of lawyers and judges had been established in England by such courageous spirits as Sir Edward Coke, who forfeited his office as Lord Chancellor rather than submit to the dictation of the King, and the noble "Man for All Seasons", Sir Thomas More, who calmly forfeited both his office and his head rather than his conviction as a lawyer and judge.

"We need not forego legitimate criticism of our legal institutions and of the legal profession to know that, as with the guarantees of free speech and press, the freedom and independence of lawyers have been key factors in our development before and since 1776. A majority of those who drafted the Declaration and later the Constitution were lawyers, and they knew that, along with Sir Thomas More, they were literally placing their heads on the block, in a noose, by their acts, which were treasonous—if the Revolution failed. . . .

"There are countless modern examples of the independence and courage of our lawyers, none more notable than that of my distinguished colleague Justice Thurgood Marshall, who as a lawyer devoted much of his life advocating the constitutional rights of one of America's largest minority groups. He succeeded in the face of personal risks and threats that have rece-



memory since the events. In the centuries between John Adams and Thurgood Marshall, thousands of lawyers have performed in the same way.

"SIXTH. Finally, we come to the independence of a group in whose hands, under our system, ultimately rests the protections of our independence—the judges who construe the Constitution and interpret the laws. Here we should remember that state judges, simply by reason of their broader jurisdiction and far greater number, are often the first line of defense of constitutional rights. . . .

"This independence, that began in 1776, and the new freedoms it ought have served to release the creative energies of our people for 100 years. We, as trustees of those freedoms, have a duty to pass them on, unimpaired, to those who follow, so they will be able to apply to the new and complex problems of the future that same kind of creativity, ingenuity, and responsibility that was released on July 4, 1776. ¶¶

#### FEDERAL COURT CLERKS' ASSOCIATION HOLDS ANNUAL CONFERENCE

The Federal Court Clerks' Association held its 47th Annual Conference in Jackson Hole, Wyoming, August 10 through the 14th. FCCA President Cletus J. Schmidt, (N.D.), host of the conference, and A. Marvin Helart, (D-Wyo), jointly arranged the program which included an address by Wyoming Governor Ed Herscherler, Judge James E. Barrett (CA-10), Chief Judge Albert Lee Stephens, Jr., (D.-Ca), and Wyoming Congressman Teno Roncalio.

The group elected James F. Vevey, (D-D.C.), as its new president and Edgar Scofield, (D.-Wn), as its vice-president.

During the conference, the bylaws of the association were amended to provide for an elected Board of Directors consisting of one representative from each circuit. ¶¶

#### CENTER HOLDS SPEEDY TRIAL PLANNING GROUP CONFERENCES

The Federal Judicial Center is sponsoring six orientation conferences for members of the planning groups established under the Speedy Trial Act. The purpose of these conferences is to provide planning group members an opportunity to become more familiar with the requirements of the statute, discuss the data which will be needed for planning purposes, discuss various problems regarding complying with the statute and suggest possible solutions to these problems.

The conferences will be designed to facilitate the exchange of ideas among members of the planning groups from different districts as well as to communicate information and experience which the Federal Judicial Center and the Administrative Office of United States Courts have to offer regarding the statute. Each district has been invited to send four delegates. Here is the schedule of the Speedy Trial Orientation Conferences: September 18-19 in Chicago (Circuits invited are the Sixth and Seventh); September 29-30 in New Orleans (Fifth Circuit invited); October 2-3 in Denver (the Eighth and Tenth Circuits invited); October 6-7 in San Francisco (Ninth Circuit invited); October 9-10 in Washington, D.C. (the Third, Fourth, and D.C. Circuits invited); and October 16-17 in New York City (the First and Second Circuits invited).

In general, the conferences are designed to help the members of the planning groups understand what the Speedy Trial Act requires with respect to both the time limits for criminal cases and the required planning.

In addition, FJC and A.O. staff members are expected to suggest how the planning groups should undertake their responsibilities. Finally, the conferences will provide a forum in which people

from different districts can discuss their views about common problems arising from the enactment of the Speedy Trial Act.

¶¶

#### WORKSHOP FOR DISTRICT JUDGES HELD

The Federal Judicial Center, in conjunction with the National Conference of Federal Trial Judges, conducted a Workshop for Federal District Judges of the Tenth Circuit, September 5 and 6, in Salt Lake City, Utah. Over 25 judges were in attendance. The seminar was created and conducted in order to provide a forum for questions and answers concerning new Federal Rules of Evidence as well as the recent amendments to the Federal Rules of Criminal Procedure. Judge C. Clyde Atkins, (S.D.-Fla.), Chairman of the National Conference of Federal Trial Judges presided over the two-day workshop. In addition to the group discussing the Federal Rules of Evidence and the Rules of Criminal Procedure, Chief Judge Reynaldo G. Garza, (S.D.-Tex.), discussed the use of multiple voir dire.

Judge Atkins discussed juror utilization in multi-judge courts and techniques of using jury pools, staggered starts, accepting pleas, status calls, and advance calendar calls.

Mr. James A. McCafferty and Judith A. Mather were present to answer questions from the judges concerning juror utilization statistics. An open discussion was held concerning JS-11 Reporting, with special emphasis on reporting of sequestered juries; and multiple voir dire reporting.

Audiotapes of these topics are available in cassette form from the Division of Continuing Education and Training, Federal Judicial Center. Anyone interested in receiving any of these cassette tapes should write or call the Education Division. Eight more of these workshops will be conducted nationally during the current fiscal year. ¶¶





James B. Ueberhorst

### UEBERHORST NAMED TO HEAD A.O. DIVISION OF MANAGEMENT REVIEW

James B. Ueberhorst has been appointed Chief of the new Division of Management Review in the Administrative Office of the U.S. Courts.

Mr. Ueberhorst comes to the Administrative Office from the State of Florida where he was its first State Courts Administrator. In this position, he served as both planner and administrator for the reorganization and consolidation of the entire state judicial system.

Among the projects developed and implemented during Mr. Ueberhorst's three years service in Florida are: A paper flow management study for streamlining the paper process in state clerks' offices; an accurate and auditable case disposition reporting system; training programs for judges; a task-oriented personnel study and studies to expedite the appellate process.

Mr. Ueberhorst is a graduate of the University of Michigan where he received the LLB and LLM degrees; he also has a Masters in International Affairs from Columbia University. In 1971 he was selected to attend a special program at the Institute for Court Management in Denver, designed to train senior management officials in the business of the courts with a view toward the federal circuit court executive program. In March 1972, he was certified as qualified to be

(See UEBERHORST page 5)



Robert J. Pellicoro

### PELLICORO NAMED TO HEAD A.O.'S CLERKS DIVISION

The Director of the Administrative Office announced the appointment of Robert J. Pellicoro as Chief of the newly created Clerks Division in the Administrative Office.

For the past year Mr. Pellicoro has served as Assistant Chief of the Financial Management Division of the Administrative Office. His exposure to the fiscal side of judiciary operations provided him insight into those significant problems, both short term and long range, that obviate the overall effectiveness of a Clerk's operations.

An early meeting last June with a representative group of clerks greatly enhanced the effectiveness of this new Division.

Mr. Pellicoro said "By getting a running start in the early stages of development of the Clerks Division, we will be better equipped to provide a meaningful, responsive channel of communication between the various elements of the Administrative Office and Clerks of Court, and thereby hopefully avert unnecessary delays in obtaining the necessary resources required to effectively discharge responsibilities of Clerks of Court."

Among major services to be provided by the Clerks Division are the dissemination of timely information and data to Clerks to keep them abreast of technological and procedural improvements, technical assistance in budget preparation, status of legislation affecting the

(See PELLICORO page 5)

### NIHAN NAMED HEAD OF FEDERAL JUDICIAL CENTER'S INNOVATIONS AND SYSTEMS DEVELOPMENT DIVISION

The Board of the Federal Judicial Center, acting upon the recommendation of Center Director Walter E. Hoffman, approved the appointment of Charles W. Nihan as Director of the Division of Innovations and Systems Development. Mr. Nihan holds an A.B. in history from the University of Massachusetts, a Masters degree in Soviet Studies from Harvard, a Master's degree in Computer Science from American University, and a J.D. from Georgetown University.

Prior to his appointment as Director of the Division, he was Assistant Director for Technology.

His background combines legal studies and those involving the application of computer technology to management problems. Among the Division's programs which Mr. Nihan is now directly responsible for implementing, are the District Court study, Computer-Aided Transcription, and COURTAN II program involving the installation of computer system linking major offices of the larger courts.

Prior to joining the Federal Judicial Center, Mr. Nihan headed the Data Integration Branch of the Naval Communications Command and served as a Naval Officer for four years on active duty in the Pacific.

He is a member of the American Bar Association, the Federal Bar Association, and the Association for Computer Machinery. ■■

(PAY from page 1)

amount of the pay increase will be limited to the 5% recommended by the President and will take effect October 1.

The Administrative Office of the U.S. Courts will issue specific instructions to the employees affected by the pay increase shortly. ■■



UEBERHORST from page 4)

appointed a Circuit Executive. Prior to serving in the federal government, Mr. Ueberhorst practiced law in the state of Michigan.

The Division of Management Review, which is committed to working positively with the Chief Judges to develop and implement better management techniques, was organized by the Director of the Administrative Office based on policy considerations of the Judicial Conference. The Conference recommended that the judicial examination function be transferred from the Department of Justice to the Administrative Office, after concluding that inspections and examinations would be more accurately attuned to the day-to-day problems and requirements of the federal judiciary and implementation of recommendations could be more closely coordinated and achieved if made by the Administrative Office.

With the approval of an initial positions for Fiscal Year 1975, recruitment and staffing has commenced. The first examinations, which presently are in progress, were initiated in August 1975, in the United States District Courts for the Eastern District of Virginia and the Middle District of North Carolina. ■■

#### FJC HOSTS CONFERENCE FOR CIRCUIT EXECUTIVES

The Federal Judicial Center hosted a three-day conference for Circuit Executives this month giving them an opportunity to meet with Center officials and senior staff members of the Administrative Office for discussions ranging from planning for the Bicentennial to the role of the Circuit Executive in implementing the Speedy Trial Act.

In addition, the Circuit Executives discussed techniques for evaluating remote oral argument (see story page 7); current problems of dealing with the news media; the role of the A.O.'s new Divisions.

(PELLICORO from page 4)

operation of the Clerk's office, types of training available, and the applicability of work-study programs.

Mr. Pellicoro graduated from City College of New York in 1956 with a B.A. in Business Administration. The next nine years he spent in New York as an Auditor with the Civil Aeronautics Board, and in 1965 came to Washington, D.C. with the C.A.B. He is experienced in administrative and financial planning, particularly in the budgeting and management of information systems.

Mr. Kirks in announcing Mr. Pellicoro's appointment stated, "It is our expectation that by the establishment of this new division in the Administrative Office, under the able leadership of Mr. Pellicoro, we will be able to render a higher degree of service to the entire system." ■■

#### JUDGE GRIFFIN BELL HEADS JUDICIAL ADMINISTRATION DIVISION

In August Federal Judicial Center Board member, Judge Griffin B. Bell (CA-5), assumed the office of Chairman of the ABA's Judicial Administration Division. As head of this Division, he leads a membership of almost 8,000 lawyers and judges for a term of one year.

Presiding at his first Council meeting last month, Judge Bell announced ambitious plans which will include programs for trial and appellate judges, state and federal, as well as administrative law judges.

Judge Bell, in taking on this ABA Chairmanship is following a consistent pattern of leadership in judicial administration endeavors aimed at bringing to the courts of our country a high quality of justice. He is a member of the Commission on Standards of Judicial Administration, a member of the Board of the Federal Judicial Center and serves on the Center's special committee studying Section 1983 (civil rights) cases. ■■

#### FORTY-FIVE NEW DISTRICT JUDGESHIPS APPROVED

S. 287, an Omnibus District Court Judgeship Bill creating 45 new judgeships affecting 43 judicial districts, was favorably reported out by the Senate Judiciary Committee September 11.

In 1973 the Judicial Conference of the U.S. requested 52 new positions after the quadrennial survey of 1972. In the same year the Chief Judges of approximately 43 courts testified before the Subcommittee on Improvements in Judicial Machinery.

As first introduced this session by Senator Quentin Burdick January 21, the bill provided for 29 judgeships. That number was later raised to 30 in Subcommittee and reported to the parent Committee in April. According to a statement by Senator Burdick at that time, the Subcommittee recommendation was based "on a statistical standard which evolved after extensive hearings." As cited in the report, the Subcommittee based the determination that more judges were needed upon the following considerations:

"(1) Either raw or weighted case filings are 400 or more per judge; and

"(2) Terminations are in excess of the national average of 358 per judge; and

"(3) The bench time averages 110 or more days per judge; and

"(4) The district has made efficient use of existing judges, supporting personnel and procedural devices in order to cope with its existing workload."

1975 statistics, supplied by the Division of Information Systems of the Administrative Office, were used by the Judiciary Committee, and the number of additional judgeships raised to 45.

(See JUDGESHIPS page 6)



(JUDGESHIPS from page 6)

The following is a list of the new proposed judgeship distribution:

Alabama, Middle	1
Alabama, Northern	1
Arizona	1
Arkansas, Eastern	1
California, Eastern	2
California, Southern	2
California, Central	1
Colorado	1
Connecticut	1
Florida, Middle	1
Florida, Southern	1
Georgia, Northern	2
Georgia, Southern	1
Indiana, Northern	1
Kentucky, Eastern	1
Louisiana, Eastern	2
Massachusetts	1
Michigan, Eastern	1
Michigan, Western	1
Minnesota	1
Missouri, Western	1
New Hampshire	1
New York, Eastern	1
North Carolina, Eastern	1
North Carolina, Middle & Eastern	1
Oklahoma, Western & Eastern	1
Oregon	1
Pennsylvania, Middle	1
Puerto Rico	1
South Carolina	1
Tennessee, Eastern & Middle	1
Texas, Northern	1
Texas, Western	1
Texas, Southern	2
Texas, Eastern	1
Virginia, Eastern	1
Virginia, Western	1
Washington, Western	1
West Virginia, Southern	1
Wisconsin, Western	1
Total	45

Eighteen new judgeships were added to the Subcommittee bill in these districts: Alabama (M), Colorado, Connecticut, Georgia (S), Georgia (N), Indiana (N), Massachusetts, Michigan (W), Minnesota, North Carolina (E), North Carolina (M & E), Oklahoma (W & E), Texas (E), Virginia (W), and West Virginia (S). Three more positions were awarded the 9th Circuit; one each to the Eastern, Southern, and Central Districts of California.

Three judgeships included in the Subcommittee's recommendations were deleted by the full Committee. They are Kansas, the Northern District of New York, and the Western District of Texas.

The Subcommittee report had originally provided that the Northern District of Oklahoma would receive an additional judgeship and

that the Northern, Eastern, and Western Districts would lose a judgeship. As finally reported by the full Judiciary Committee, the Eastern and Western Districts of Oklahoma will receive an additional judgeship.

The judgeship for the Eastern District of Tennessee will be a judgeship also for the Middle District.

The allocation of 45 judgeships is seven positions short of the Judicial Conference request of 1973.

New Jersey, because of a concurrent increase in multiple defendant criminal cases, with a civil case filing record, had pressed for the additional judgeship recommended by the Conference. The addition was denied in S. 287 as now drafted. The extra position would, in fact, have returned this district to the 10 judgeship status quo of 1970. Upon

Judge Augelli's attainment of senior status in 1972, a vacancy was created in this district which, by law, could not be filled.

In Massachusetts four more judgeships were recommended by the Judicial Conference but only one was stipulated in S. 287. In the Texas districts, statewide, the Conference requested 10 judgeships; 5 were granted in the bill.

The following table shows the number of judgeships requested by the Judicial Conference of the U.S. in other districts in which recommendations were not met, and those allocated by S. 287:

District	Judicial Conference	S. 287
California (N)	2	0
Florida (M)	2	1
Florida (S)	2	1
Alabama (S)	1	0
New York (N)	1	0
California (C)	2	1
Virginia (E)	2	1



Chief Judge Irving R. Kaufman

#### CHIEF JUDGE KAUFMAN REVIEWS SECOND CIRCUIT PROGRESS

Chief Judge Irving R. Kaufman (CA-2), in an address at the opening session of the Circuit's Judicial Conference, September 11, detailed the progress which this court has made during the last year.

Chief Judge Kaufman pointed out in his address that:

- The circuit, for the fourth time in the last five years, has managed to terminate more cases than were filed.
- The successful progress to expedite criminal appeals was a major

(See KAUFMAN page 7)



Chief Judge Collins J. Seitz

#### CHIEF JUDGE SEITZ REPORTS ON THE STATE OF THE THIRD CIRCUIT

Chief Judge Collins J. Seitz (CA-3) in his remarks September 11 to the Third Circuit Judicial Conference said that for the first time in recent memory there is not a judgeship vacancy in the Third Circuit and this is especially important because of the heavy caseload which this Circuit has at the present time.

Here are the other key points which Chief Judge Seitz made in his remarks:

- Bankruptcies have reached

(See SEITZ page 7)



KAUFMAN from page 6)

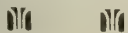
factor in reducing the median time for disposition to 4.5 months for these cases, the best record in the Nation.

The impact during its first full year of operation of the Circuit's innovative plan for handling civil appeals. The Civil Appeals Management Plan (CAMP) has streamlined appeals and encouraged settlements.

At the trial court level there are 7.6% fewer criminal dockets than five years ago. However, civil terminations, circuitwide, have increased 23.4%, more than double the growth in civil filings. The individual assignment program in the Southern District of New York has significantly reduced the backlog of that court and brought it nearly to currency.

The work of the Committee on Sentencing has culminated in model sentencing procedures coupled with the drafting of benchmark sentences which will serve to reduce sentencing disparities.

Finally, and perhaps most significantly, Judge Kaufman discussed the twin themes of the Second Circuit Judicial Conference: The continuing efforts to improve the quality of advocacy both for attorneys being admitted to practice before the courts of the circuit, as well as for "the incumbent incompetent" and recognizing as well as solving problems in professional responsibility.



EITZ from page 6)

awesome height and the burden is extremely heavy on bankruptcy judges in the Circuit.

He commended the district judges of the Circuit for their ever-increasing use of federal magistrates and also praised the work of the Clerks' offices in both the district courts and the Court of Appeals and hoped that the Administrative Office will recognize that there is a need for increased personnel to assist these

offices in handling what he termed a "staggering" workload.

- He said that the satellite libraries in Newark, Pittsburgh and Wilmington are now staffed as a result of the satellite library project authorized by the Judicial Conference of the United States and that the central library in Philadelphia will have an even larger collection. Thus, this library will be able to offer its services to the library network which is now in operation throughout the Third Circuit.
- In the fiscal year ending June 30, 1975, he said that appeals were up 14% over the previous year and that except for the First Circuit, this was by far the largest percentage increase in all of the circuits. However, despite this workload he said that the "Court of Appeals is current, thanks to the efforts of both the active and senior judges."
- He said that despite strong recommendations in some legal circles that the Circuit change its practice and grant oral argument in nearly all appeals as well as give reasons for its decisions in all cases, the judges of the Circuit feel they should continue their current practice. "Given the workload and available judicial manpower, our judges feel that we must adhere to the present system if we are to process the cases with reasonable expedition." He also added "We will, of course, continue to write opinions in those cases where an exposition or elaboration appears to be dictated by the subject matter or the state of the law."

## FJC & ABA JOIN TO CONDUCT INTERSTATE ORAL ARGUMENT USING VIDEO PICTUREPHONE

In what will be the first long-range oral argument in federal courts using video techniques, the Federal Judicial Center and the American Bar Association's Appellate Judges' Conference will conduct a joint experiment October 16 in Washington, D.C. and New York City.

The experiment will involve the oral argument of an actual case on the docket of the U.S. Court of Claims. Attorneys representing both litigants will argue before a podium in New York. As the attorney addresses the panel of three Court of Claims judges sitting in a specially designed mock courtroom in Washington, D.C., he will be able to watch all three judges on a large television screen.

Simultaneously, the panel of judges in Washington, D.C. will each be able to observe the attorney presenting his argument on individual screens. This experiment is being conducted through the joint efforts of Judge Robert Kunzig of the U.S. Court of Claims and Mr. Tom Patrykus of the American Telephone and Telegraph Company.

The project is being evaluated by Judge Joseph F. Weis, Jr. (CA-3) and major credit for the entire program must be given to the efforts of Justice Albert Tate of the Supreme Court of Louisiana.

The results of the project will be published in the October issue of *The Third Branch*.

## JUDICIAL CONFERENCE REPORT IS RELEASED

The report of the Spring 1975 meeting of the Judicial Conference of the United States has now been formally printed and released by the Administrative Office.

Included in this publication are over forty pages summarizing Judicial Conference resolutions, committee recommendations, and references to oral and written reports of

the Directors of the Federal Judicial Center and the Administrative Office as well as the Panel on Multi-district Litigation.

While many managerial and personnel matters were considered, the following actions of the Conference had special significance:

- Approved, in principle, legislation
- (See REPORT page 8)



# ajc calendar

Oct. 2-3 Workshop for District Judges, Jacksonville, Fla.

Oct. 3-4 Judicial Conference Advisory Committee on Appellate Rules, Washington, D.C.

Oct. 20-24 Orientation Seminar for Probation Officers

Oct. 20-24 Seminar for Asst. Federal Public Defenders, Chicago, Illinois

Oct. 28-31 In Court Management Training Institute, San Juan Puerto Rico

Oct. 31-Nov. 2 National Conference of Bankruptcy Judges, Houston, Texas and Mexico City, Mexico

Nov. 3-6 Seminar for Non-Metropolitan Clerks, Atlanta, Ga.

Nov. 3-7 Advanced Seminar for Probation Officers, Ashville, N.C.

Nov. 19-21 Regional Seminar for Bankruptcy Judges, New Orleans, La.

Nov. 24-25 Federal Judicial Center Board Meeting, Williamsburg, Va.

## THE THIRD BRANCH

VOL. 7, NO. 9 SEPTEMBER 1975

## THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
1520 H STREET, N.W.  
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

# PERSONNEL

## Nomination

Eugene E. Siler, Jr., U.S. District Judge, E. & W. D. Ky., Sept. 19

## Appointment

Richard Dean Rogers, U.S. District Judge, D.Kan., Aug. 7

## Death

Harvey M. Johnsen, U.S. Senior Circuit Judge, (CA-8), Sept. 18

Charles L. Powell, U.S. Senior District Judge, E.D. Wash., Aug. 17

## Confirmation

Clarence A. Brimmer, Jr., U.S. District Judge, Dist. of Wyoming, Sept. 15

Terry L. Shell, U.S. District Judge, E. and W. Dist. of Arkansas, Sept. 15

(REPORT from page 7)

which calls for the establishment of a Council on Judicial Tenure (but adding suggestions from the Conference).

- Approved a pilot project for satellite libraries in the Third Circuit, in those cities other than where the Circuit's central library is located.
- Asked the Federal Judicial Center to conduct a library study designed to eliminate the artificial distinction between libraries of

courts of appeals and district courts, and to avoid duplication of holdings.

- Approved certain amendments to the Code of Judicial Conduct.
- Voted authority to the Committee on Administration of the Criminal Law, in conjunction with the Advisory Committee on Criminal Rules, to amend plans adopted under Rule 50(b) of the Federal Rules of Criminal Procedure; take certain steps to implement the first phase of the Speedy Trial Act, as well as implementation procedures beyond the first phase.
- Assigned to the Committee on the Administration of the Probation System oversight of the implementation of Title II of the Speedy Trial Act.
- Considered certain Sections of S. 1, the proposed legislation to revise the Federal Criminal Code. Conference members again expressed the view that a traditional recodification of the existing statutes "would serve all the purposes of a completely new code redefining federal crimes." Also reported, however, were views of some members that "if such a comprehensive code is to replace all present federal criminal statutes, the present time was most inappropriate. . . ." Copies of the report are available through FJC Information Service. III

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# The Third Branch

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## Bulletin of the Federal Courts

DL 7, NO. 10

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

OCTOBER 1975

### Senate Acts on Circuit and District Judgeships

The Senate this month passed and sent to the House S.286 authorizing seven additional judgeships for the U.S. Courts of Appeals. One each will go to the First, Third, Fourth, Sixth, Seventh, Eighth and Tenth Circuits.

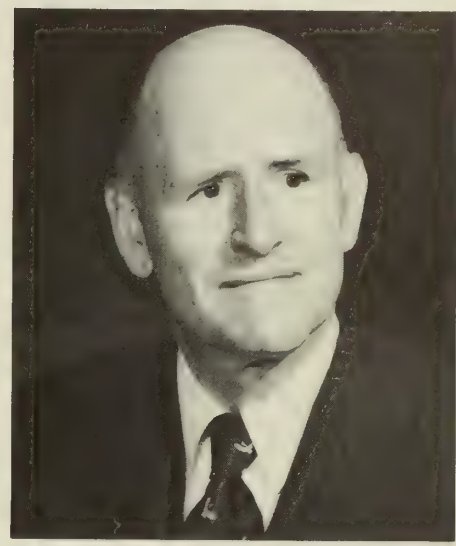
The Judicial Conference had recommended fifteen new posts but the Judiciary Committee amended the bill to delete two positions for the Second Circuit and one of two recommended for the Fourth Circuit. Action on five new judgeships for the Ninth Circuit was postponed pending final Congressional action on S.729, a bill to divide the Fifth and Ninth Circuits.

In a detailed report (S. Rept. 4404) the Judiciary Committee praised the Courts of Appeals for increased efficiency but expressed some concern as to whether this increase has been achieved at the expense of a reduction in the amount of mature consideration which each case is given in the appellate process."

The report cites a 200 percent increase in cases terminated over the past eight years with only a 1 percent increase in the number of judges. However, the report adds, the number of signed opinions increased from only 30 to 33 per judge while the number of per

(See JUDGESHIPs page 7)

### PROBLEMS OF THE FEDERAL COURTS TODAY An Interview with Deputy Attorney General Tyler



Harold R. Tyler, Jr. was a U.S. District Judge (S.D. N.Y.) for 12 years before he was sworn in April 7, 1975 as the 35th Deputy Attorney General of the United States.

### JUDGE MURRAH MOURNED

Judge Alfred P. Murrah, Director of the Federal Judicial Center for four and one-half years before his retirement in October, 1974 died October 30 in Oklahoma City. He was 71.

Judge Murrah, one of the youngest men ever appointed a federal district judge, served the judiciary for nearly 40 years.

In a statement praising Judge Murrah, The Chief Justice said "Few men will equal his contributions to the improvement of justice."

### A.O. DIRECTOR KIRKS HOSPITALIZED

Rowland F. Kirks, Director, Administrative Office, had surgery October 17 and is responding well.

Since he has not yet been able to make personal responses, he wishes to express through *The Third Branch* his appreciation to his many friends who have written and called with get-well messages.

**Q:** As a former district judge and member of the Federal Judicial Center board, you are in a unique position to observe the problems of the federal courts. What, in your opinion, are the major problems today?

**A:** Well, I feel that despite the many advances in recent years, particularly since the legislation creating the Center, the courts

(See TYLER page 5)



### MONTHLY GRAND JURIES RECOMMENDED FOR SPEEDY TRIAL

The Judicial Conference Committee on the Operation of the Jury System has concluded that all district courts should schedule monthly grand jury sessions to ensure compliance with the Speedy Trial Act provisions on indictment, 18 U.S.C. §3161(b).

The section provides that, when the permanent time limitations of the Act have become fully effective, an information or indictment shall be filed within 30 days from the date of arrest or service with summons, or within sixty days if a felony is charged and no grand jury has been in session in the district during the thirty-day period. Less stringent, graduated time limitations for the first three years following the implementation of the Act are set forth in 18 U.S.C. §3161(f).

The Jury Committee's report, which the Judicial Conference authorized at its September, 1975 session for distribution to all district courts, was prepared by Judge William K. Thomas of the Northern District of Ohio, acting as a subcommittee. Judge Thomas recommended that an essential adjunct of the proposed monthly grand jury meeting schedule should be the installation and use in each court of a "code-a-phone", or similar device to permit the recording and continuous playback of telephone messages. Use of the device will permit grand jurors to receive a recorded message from the clerk of court confirming that they must report or informing them that the session of the grand jury has been cancelled.

The "code-a-phone" device, which is already employed by many district courts to inform petit jurors of a continuance or settlement of their cases will permit the scheduling of regular monthly grand jury sessions without detriment to the courts' jury utilization index.

The Committee's report cites the related question of whether an

### FJC SEEKS DATA ON BENCH MATERIALS

Judge Robert J. Kelleher (C.D. Ca.), in a communication to F.J.C. Director Hoffman, has listed several books and manuals he finds useful and queries whether other judges might have additional listings.

Judge Kelleher's list includes, in addition to the Bench Book, such publications as the Manual of Federal Practice, the Handbook on Proving Federal Crimes, and the Handbook on Criminal Procedure in the United States District Courts.

The Director solicits your cooperation in compiling a comprehensive list. Please send to Judge Hoffman at the Center information on any material you recommend for quick reference on the bench. It may be that some judges have prepared their own material, or know of local publications which are not in national circulation. If so, this also would be of interest.

When all information is in hand FJC staff will compile a total list and make it available to all federal judges.

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indictment can validly be returned by a grand jury selected from one division of a judicial district charging an offense alleged to have been committed in a different division or place of holding court.

Because this practice would simplify the implementation of the Speedy Trial Act time limits, and because the case law on this question is contradictory, the Jury Committee has appointed a subcommittee, chaired by Judge Myron Gordon of the Eastern District of Wisconsin, to study this matter and report to the Committee and the Conference.

Judge Gordon's subcommittee will also consider the related question of whether a criminal defendant can be tried by a petit jury which sits in and is selected from a division different from that in which the offense is alleged to have been committed, consistent with the federal jury laws.

### SUPREME COURT TAKES HEADSTART ON 1975 TERM

Complying with custom and statute, the Supreme Court of the United States officially opened its October Term, 1975 on October 6.

However, faced with a headcaseload of appeals, petitions for certiorari and cases awaiting argument, the nine Justices met in closed sessions a week earlier to review and pass upon the accumulation of filings since they adjourned last June.

The earlier meetings permitted the Court to immediately schedule hearing arguments in pending cases.

This Term's first Conference included a total of 867 cases. Some hundred and thirty-two of them were petitions for writs of certiorari and 61 were appeals. There is every reason to expect the increase in filings will continue as it has over the years, with an average of over 400 cases each Term.

The Court has begun its 1975 Term on the first Monday of October since 1917.

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### NEW CHICAGO CORRECTIONAL CENTER HONORS JUDGE CAMPBELL

Chicago's impressive new Federal Metropolitan Correctional Center was dedicated this month in honor of William J. Campbell, Senior District Judge and former Chief Judge of the Northern District of Illinois. The 26-story, \$10.2 million center is one of three high-rise correctional facilities completed in recent months by the Federal Bureau of Prisons. The others are in San Diego and New York City.

A special plaque inside the Chicago center dedicates it to Judge Campbell for his "leadership, vision and untiring effort" in making the facility a reality. Judge Campbell served as U.S. Attorney in Chicago from 1938-40 and has been on the federal bench there for the past thirty-five years.



# LEGISLATIVE OUTLOOK

**Jurors' Fees.** S. 539, which would raise jurors' fees to \$25.00 per day and provide juror employment protection, passed the Senate on September 30.

**Securities Act Amendments.** The recently enacted Securities Act Amendments of 1975, P.L. 94-29 contain a provision which may be of considerable interest to the judiciary. Section 25 of the Act authorizes any person aggrieved by a final order of the Commission to obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit. When the same order or rule is the subject of one or more petitions for review and an action for enforcement has also been filed in a district court of the United States under Section 21, the court in which the petition or the action is first filed will have jurisdiction with respect to the order or rule to the exclusion of any other court and such proceedings are transferred to that court. For the convenience of the parties in the interest of justice, that court can thereafter transfer all the proceedings to any other court of appeals or district court whether or not a petition or action was originally filed in the transferee court. The scope of review by the district court in such a situation would be the same as review by a court of appeals.

**Child Support Program.** The House of Representatives has passed H.R. 8598 which would remove the enforcement of the child support program from the federal courts. However, the bill does not affect the law relating to garnishment of federal employees' salaries. H.R. 8598 is now pending in the Senate Committee on Finance.

## FJC PLANS CASSETTES ON SPEEDY TRIAL ISSUES

The Federal Judicial Center is preparing audio cassettes with selected presentations from the recently concluded regional conferences on implementation of the Speedy Trial Act.

It is contemplated that the cassettes may be helpful to members of the speedy trial planning groups who were not able to attend the conferences. Requests for the cassettes should be directed to the Continuing Education & Training Division of the Federal Judicial Center.

**S. 2018—National Worker's Compensation Act of 1975.** This bill would require the states to maintain or provide a prompt and comprehensive system of compensation for work-related injuries, diseases or deaths. Section 9 of the bill provides that any employee or survivor of a deceased employee aggrieved by a determination of the state worker compensation agency may bring suit in either the appropriate district court or in the state court with appropriate jurisdiction. Cases filed in a federal court by a private individual must meet the \$10,000 jurisdictional limit. In addition, the Secretary of Health, Education and Welfare may bring an action in federal court to require a state to provide the necessary required benefits and may do so without regard to the amount in controversy. The Secretary may also intervene in an action filed by a private party. Attorney's fees would be included as a part of the award.

**Three-Judge Courts.** H.R. 6150 which would require three-judge courts only in cases involving state or congressional reapportionment or when specifically required by Act of Congress has been reported out of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and is now pending in the full House Judiciary Committee.

## BILL EXPANDING MAGISTRATES' JURISDICTION MOVES FORWARD

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery has approved S. 1283, a bill to expand the jurisdiction of U.S. Magistrates.

The full committee is expected to act momentarily on the bill and report it favorably to the Senate.

According to the report prepared by the subcommittee on the bill, its purpose is to amend section 636(b), Title 28 U.S. Code, "in order to clarify and further define the additional duties which may be assigned to a U.S. Magistrate at the discretion of a judge of the district court.

"These additional duties generally relate to the hearing of motions in both criminal and civil cases, including both preliminary procedural motions and certain dispositive motions. The bill provides for different procedures depending upon whether the proceeding involves a matter preliminary to trial or a motion which is dispositive of the action. In either case the order or the recommendation of the magistrate is subject to final review by a judge of the court."

The committee added these three key amendments to the original bill:

"(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action for failure to comply with an order of the court. A judge of the court may reconsider any pretrial matter under this subparagraph (A)

(See JURISDICTION page 4)



## MAGISTRATE NAMED TO KANSAS SUPREME COURT

For the second time in recent months a U.S. Magistrate has been honored by appointment to a State Supreme Court. He is Robert H. Miller, (D. Ks.), named to the Supreme Court of Kansas. Justice Miller was a state district judge from 1961 to June 1, 1969 when he received one of the first appointments as a U.S. Magistrate.

In July of this year U.S. Magistrate Joseph W. Hatchett, (M.D. Fla.), was appointed to the Florida Supreme Court.

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(JURISDICTION from page 3)

where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

"(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for post-trial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

"(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties. Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

## JUDICIAL CONFERENCE ACTIONS

At its semi-annual meeting here the Judicial Conference of the United States voted to disapprove, insofar as they might apply to the judiciary, two pending bills (H.R. 110 and H.R. 3249) which would require the filing of reports on outside income with the Comptroller General.

The Judicial Conference has taken the position that legislation is not needed for the Judiciary since the Conference already has adopted a resolution calling for semi-annual filing of public reports on extra-judicial income.

In other actions the Conference:

- Announced that it had approved for transmission to the Supreme Court comprehensive rules governing procedures in railroad reorganization cases and in cases involving the composition of indebtedness of certain taxing authorities under the Bankruptcy Act. This action completes a ten-year effort by the Conference to promulgate rules governing all proceedings in bankruptcy. If approved by the Supreme Court, the new rules will be sent to Congress and will become effective in ninety days unless Congress decides otherwise.
- Voted to take no action on various no-fault auto insurance bills pending in Congress.
- Disapproved in their present form two bills (S. 670 and S. 673) which would authorize consumer actions in federal courts without regard to the citizenship of the parties and the amount in controversy.
- Recommended that Congress reconsider the culpability provisions contained in S. 1, a bill to revise and codify all federal criminal law. The Conference is submitting to Congress its formulation and definitions of the degrees of culpability in lieu of those proposed in the bill.

## FLORIDA OPINION LIMITS ROLE OF U.S. COURTS IN GARNISHMENTS

A United States district court interpreted a recent amendment to the Social Security Act as not conferring jurisdiction on the federal courts to enforce child support obligations through the garnishment of salaries of federal employees. The recent ruling by Chief Judge Winston Arnow of the Northern District of Florida construed section 459 of the Social Security Act, which was added to that law by the Social Security Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337, as not jurisdictional.

Judge Arnow's order in the case of *Carroll v. Carroll* (No. P-M-75-63), dated July 29, 1975, directed the Clerk of his court to file an action for a writ of garnishment to enforce certain child support orders entered by a state court in connection with a final judgment of dissolution of marriage. Judge Arnow held that Congress, in enacting the provision making subject to garnishment moneys payable by the federal government, did not contemplate or allow the writ of garnishment to be issued by a federal court to a federal agency for the salary of an employee. The order added, "such writ must be issued in state court; the Act of Congress deals only with the enforcement of the garnishment through its process on the United States to the same extent as though the United States were a private person."

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- Adopted a resolution making clear that under the Code of Judicial Conduct, bankruptcy judges may not act in any untested matter pending before them in which they may have a financial interest.

This action was made necessary by the new judicial disqualification statute, 28 USC 455.



LER from page 1)

do have a number of great problems. I believe, as I think others do for example, that too many of the nation's problems which surface in the executive and legislative branches, and which I believe would be better and more fairly handled by those two branches, are coming out of the legislative process and being dumped upon the courts. I think this is terribly difficult for the courts. It not only adds burdens of time, that is, by expanding jurisdiction, but it diminishes the federal court system in the eyes of some thoughtful people because many of these matters are really quite trivial, and probably unnecessary. I refer here to such matters as the food stamp cases, as I call them, in which a person or firm denied eligibility to handle stamps can get a hearing before an administrative judge, and if he doesn't like the result, elitigate the same thing in a federal district court. Now, these cases often involve small sums of money with no particular legal issues at all, and we have the peculiar situation in which a federal court is asked to do absolutely the same task that an administrative court has done simply because someone in Congress thought that this was the right thing to do. I find this kind of thing debilitating to the moral of the judges. In addition, it creates a special class that gets the right of two trials simply because it does not like the result of the first trial. Now, I regard that type of thing as extraordinarily unnecessary, time consuming, and costly. It is even worse if the public grasps what is going on for I don't see how they can avoid the impression that the federal courts are rather trivial in some of their work.

Also, I think there are areas where the courts involve them-

selves unnecessarily. This controversy surfaces and resurfaces over the years. But I think in recent times judge-made law, which has nothing to do with the Executive or Congress as such, has gotten the federal courts in particular into areas where they really don't have as much expertise as say, the Legislature or the Executive. I think that has brought the federal court system into some disrepute. It's a troublesome thing, particularly to one like me who loves the federal courts and feels that they on the whole have been one of the strongest, if not the strongest, institution we have in modern times. If that is anywhere close to being true, then there is all the more reasons to be concerned that a good and strong institution is being eroded and depreciated.

**Q:** *In response to a question about abuse of power, at a recent press conference, Attorney General Levi was quoted as saying he thinks "there is a great danger of judicial power, too." "In fact," he added, "if one wished to see where power has corrupted most, one might even find it there." What is your response to that?*

**A:** What the Attorney General is talking about is corruption in the institutional sense where an institution either takes unto itself, or without even asking for it, is given more powers or jurisdictions, as we say in our profession, than it really ought to have. I think that we may, as a people and as a country, be asking the judiciary to do too much; not only from the judiciary's point of view in doing the best job possible, but in the terms of overall public good. I also admit, as a former judge, that we as judges from time to time are guilty of usurping or reaching out and taking control of an issue when

it might have been wiser to use "judicial restraint". I would be the first to say, and perhaps I am somewhat subjective as a former judge, that when that has happened, I don't really think there is much question but that the judges did this with what they regarded as the best of motives at the time. I understand that. They were trying to resolve what they saw as an important controversy. In other words, what I think the Attorney General and others in our profession have been worried about is that the federal courts, partly for reasons beyond their control and to some extent for reasons within their control, have been getting into too many issues and areas for their own good and for that of the public.

For whatever reason, judicial restraint does not seem to be favored particularly much by a number of judges and lawyers. Lawyers, incidentally, perhaps in a very real sense, might be blamed here because the federal courts have been victimized by their own popularity among lawyers. Judge Friendly of my old circuit has written eloquently and I believe correctly on this point. As he puts it, "It's nice to be loved, but on the other hand it's dangerous to be loved to the point where we are encouraged to do more as judges than we ought to be doing."

(See TYLER page 6)

## SUPREME COURT TO HEAR FREE TRANSCRIPT CASE

The Supreme Court October 6 announced it will review a 9th Circuit decision (*U.S. v. MacCollom*) that would grant indigent federal prisoners an unconditional right to free trial transcripts if they seek post-conviction relief under 28 U.S.C. 2255.



(TYLER from page 5)

**Q:** *If we view the federal courts as one of our strongest institutions, it will be only as strong as the men on the federal bench. Do you feel the quality of our judges is improving or do you find anything faulty in our selection process?*

**A:** My own view, which is reinforced by people in an even better position to know, is that in recent years the quality of our judges has improved. Since the middle 50's, I would guess, there has been a steady upward trend in terms of the caliber of the federal judicial appointments in spite of the relatively low pay. During the last several years judges have been beset by two pressures: the fact that they didn't get a raise for a long time plus the serious inflation. I am convinced, for example, that when I started as a judge at \$22,500 I was better paid than when, in the last few years, I was receiving \$40,000.

**Q:** *Do you think the American Bar Association Committee on the Federal Judiciary has played a helpful role in the selection process?*

**A:** The role of the American Bar Association has been criticized recently and particularly in regard to an appointment in my old circuit. I would assume that from time to time the American Bar Association like anybody else, could make mistakes in judgment. But I still feel that their role in the process has been and continues to be of the utmost benefit to the courts and to the communities in which the federal courts sit.

**Q:** *What about the role of Congress?*

**A:** There have been arguments, quite understandably, that the process could be improved if the historical blue slip practice in the United States Senate were somehow stopped. I can frankly say that though I understand that argument, I am not yet totally convinced that

removing judicial appointments from regular politics would necessarily be the panacea that many high-minded and sincere people believe. I have been astonished in my new role as Deputy Attorney General in the last five months, and pleasantly astonished, to find that most Senators really take their obligations very seriously. In fact, some Senators are amazingly conscientious and knowledgeable in their search for candidates. And I must say that is extremely encouraging. Now, of course there are exceptions to that, to be sure. But when you think about the whole process, it really works tolerably well. At best, it works very well.

**Q:** *What effect do you think the Speedy Trial Act will have on the Federal Courts?*

**A:** In those courts which are reasonably up-to-date now, and there are many of those, it will have no particular impact, barring some unforeseen local shifts of criminal business. But in those courts which now are a little bit behind, or moreso, there will be difficulties; I think rather extreme difficulties, not just for the court personnel themselves, but perhaps even for the defense bar and the United States Attorneys. I might say in that regard that Justice Clark and I have had a number of conversations together, and then with the Chief Justice separately, about the possibility of the Department's engaging in a pilot project involving not only our own lawyers, but judges. We hope this project will cause the Judicial Branch no expense and provide an opportunity to see, in those districts where there are potential difficulties, what the real impact of the Speedy Trial Act will be. This would help us to measure that impact in advance for the benefit of the courts and put us in a better position

to report on that impact to Congress. I think the Congress, if not immediately, must soon begin to realize and become concerned with the cost of additional court personnel, perhaps additional prosecutor equipment, courtrooms and the like.

**Q:** *Will this program also study the effects on civil calendars?*

**A:** That's right. That's a point that certainly interests me personally because I know what happened in the Southern District of New York when we first went on the individual calendar. We also had a circuit local rule which had goals much the same as those of the Speedy Trial Act, and one result was that a great many of the judges weren't trying civil cases at all for several years. I think this is very unfair to litigants and lawyers who have cases in the civil area.

**Q:** *Do you favor the pending proposal to establish a National Court of Appeals?*

**A:** Well, I have to say that I do not favor that concept. I say that with great pain because a number of the members of the Commission on Revision of the Federal Court Appellate System are great friends of mine, not the least of whom are the chairman and the vice-chairman. I feel myself that it would be in the long run and probably even in the short run, an unintended but nevertheless actual disservice to the High Court, and indeed it might do really a great disservice to the Courts of Appeals.

**Q:** *Would you be bothered by American public's lack of faith in access to the Supreme Court?*

**A:** Well, I think so a little bit, though that is not one of the major reasons for personal feeling that a National Court of Appeals would be a bad idea. Conversely, I think one of

(See TYLER page 5)



LER from page 6)

major concerns is that at best this would be a "bandaid" approach. I think the proper approach is to look at the problems of the federal courts as a whole. I might say in that regard that the Department of Justice is thinking of ways to assist the courts because I happen to believe, and the Attorney General agrees, that it's historically been the high and proud purpose of the Department to assist the courts in every way that it can. In fact, we have constituted a small committee of which the Attorney General and I are both members, to consider the ways in which we can help the courts with their burdens and make proposals to the courts for their consideration. The Solicitor General, as Chairman, has already had one meeting of this committee.

*Would you comment on operations of the Law Enforcement Assistance Administration and complaints by state Chief Justices about inadequate Federal funding of the Courts?*

LEAA has always had problems because its constituency is made up of so many diverse elements in the criminal justice system, and they are always jockeying for more favors in terms of grants and support. My feeling is, and I think it is shared by the top management of LEAA, that we've got to do more in every way we can for the courts as opposed to say, the police, prosecutors, and so on. There has been, although sometimes the press says otherwise, a shift in LEAA away from emphasis on police and prosecutorial matters. That shift has shown up most dramatically so far in favor of the correctional parts of the system. Perhaps because of my background, I have been very concerned about seeing that the courts get better attention.

Soon, I hope, some realistic financial support will come for some of the difficult problems of the state courts. I have spent a great deal of time with LEAA in the last few months for a variety of reasons including important interests in such things as this. LEAA, without any particular crowding or pushing from me, is, I think, genuinely interested and concerned in shifting the focus to the courts a good deal more. There are some real things that LEAA can do, and its personnel are sensitive to this situation.

*Q: What view do you think Congress now takes of LEAA?*

*A:* There is a great deal of dispute inside Congress and out as to how to approach LEAA funding or grants. There is a school of thought that thinks this should be done by block grants, discretionary grants and the like. There is another school of thought in Congress, and it's getting stronger I think, which suggest that either Congress or the Attorney General or somebody should earmark LEAA funds. In fact, this summer the Congress in the 1976 fiscal year budget made efforts along the latter line. They earmarked funds for two areas: juvenile delinquency and law enforcement education, the so-called LEEP program of LEAA. Well, this creates problems. If Congress earmarks spending in those two directions, for example, we all have to recognize that that somewhat diminishes the possibility of block grant or discretionary funding which would benefit the courts, other than say, the juvenile courts. But even with all that, I still think that LEAA would like to give more priority to the courts, recognizing quite frankly that the courts, and whatever they do, have a major impact on what the police do, what the prosecutors do, and what the correctional people do.

(JUDGESHIPS from page 1)

curiam opinions increased from 14 to 36 per judge. A large number of cases, the report adds, were terminated without use of either signed or per curiam opinions. "Undue expansion of summary dispositions," the committee said in another expression of concern, "poses a potential threat to public acceptance of adjudications."

The committee said a caseload of 87 to 104 filings per judge was considered evidence of the need for a new judgeship in 1967 and noted that fiscal 1975 filings ranged from 126 to 193 in the seven Circuits for which new judgeships were recommended.

**District Judgeships.** S.287, to create 45 additional district judgeships in 40 districts, has been favorably reported by the Senate Judiciary Committee.

In its report (S. Rept. 94-387) the Committee said it had rejected the idea of basing its recommendations on projected needs since it has not found a reliable method of forecasting future caseloads. Instead, the Committee said it concluded that an additional judgeship was justified if the district met the following criteria, using 1975 statistics:

- Either raw or weighted case filings of 400 or more per judge;
- Terminations in excess of the national average of 358 per judge;
- Bench time averaging 110 or more days per judge; and
- Efficient use of existing judges, supporting personnel and procedural devices to cope with the existing caseload.

However, the Committee said it relied on separate evaluations, and not the general criteria, in recommending new judgeships for six large metropolitan districts because most such districts are "less able to achieve a rate of terminations equal, or even near, to the national average." The Committee said it "was unable to pinpoint an explanation for this phenomenon."



# aoa fjc calendar

Oct. 27-29 Conference of Metropolitan Chief Judges, Lake Buena Vista, FL

Nov. 3-6 Seminar for Non-Metropolitan Clerks, Atlanta, GA

Nov. 3-7 Advanced Seminar for Probation Officers, Asheville, NC

Nov. 11-14 Orientation Seminar for Magistrates, Washington, DC

Nov. 17-21 Advanced Seminar for Probation Officers, Monterey, CA

Nov. 19-21 Regional Seminar for Bankruptcy Judges, New Orleans, LA

Nov. 24-25 Federal Judicial Center Board Meeting, Williamsburg, VA

Dec. 17-19 Seminar for Bankruptcy Chief Clerks, Ft. Lauderdale, FL

Jan. 27-30, 1976 Seminar for Federal Public Defenders, San Diego, CA

# THE SOURCE

The Information Service  
of the Federal Judicial Center

- Equal Justice Under Law; The Supreme Court in American Life. Mary Ann Harrell. The Foundation of the Federal Bar Association with the cooperation of National Geographic Society, 1975.

- Federal Judicial Invalidation as a Remedy for Irregularities in State Elections. Kenneth W. Starr, 49 N.Y.U.L. Rev. 1092-1129 (Dec. 1974).

- Federal Rule-Making Process: a Time for Re-Examination. H. Lesnick. 61 A.B.A.J. 579-84 (May 1975).

- Prerecorded videotape trial: a Status Report. J.L. McCrystal, G.O. Kornblum. 25 Fed. Ins. Council Q. 121-37 (Winter 1975).

- Recent Reforms in the Federal Judicial Structure—Three-Judge District Courts and Appellate Review. Bennett Boskey, Eugene Gressman. 67 F.R.D. 135-57 (Aug. 1975).

- Search for Truth: an Umpireal View. M.E. Frankel; Judge Frankel's Search for Truth. M.H. Freedman; The Advocate, the Truth and Judicial Hackles: a Reaction to Judge Frankel's Idea. H.R. Uviller. 123 U. Pa. L. Rev. 1031-82 (May 1975).

# PERSONNEL

## Appointments

Clarence A. Brimmer, Jr., District Judge, (D.Wyo.), Sept. 2  
Terry L. Shell, U.S. District Judge, (E.&W. D.Ark.), Sept. 26

## Confirmation

Ralph G. Thompson, U.S. District Judge, (W. D.Okla.), Oct. 9

## Nomination

Charles H. Haden, II, U.S. District Judge, (N.&S. D.W.Va.), Oct. 1  
Eugene E. Siler, Jr., U.S. District Judge, (E.&W. D.Ky.)  
John F. Grady, U.S. District Judge, (N. D.Ill.), Oct. 20

## Deaths

Herbert W. Christenberry, U.S. District Judge, (E. D.La.), Oct. 5  
Richard Hartshorne, U.S. Senior District Judge, (D. N.J.), Sept. 1  
Clifford O'Sullivan, U.S. Senior Circuit Judge, (6th Cir.), Oct. 7  
Alfred P. Murrah, U.S. Senior Circuit Judge (10th Cir.), Oct. 3

- U.S. District Court Current Listings Alert. Monthly National Listing of Recently-Filed Actions on Fed. Stats., W. Pub. Co., WN D.C.

THE THIRD BRANCH  
VOL. 7, NO. 10 OCTOBER 1975

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# The Third Branch

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## Bulletin of the Federal Courts

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NOVEMBER 1975

### REPORT ON CASELOAD FORECASTING RELEASED

The Research Division of the Federal Judicial Center—after a major two-year effort—has completed the first stage of a project designed to develop reliable procedures for forecasting future caseloads of the federal district courts.

These procedures, based on sophisticated new methodology, are outlined in detail in a preliminary report published this month under the title: "District Court Caseload Forecasting: An Executive Summary."

Judge Walter E. Hoffman, Director of the Federal Judicial Center, said the new forecasting techniques, when fully perfected, should meet current objections to allocating judicial manpower and other resources to the federal courts on the basis of projected needs. He

said the immediacy of the problems is illustrated by the Senate Judiciary Committee's recent refusal to base its recommendations for new district judgeships on caseloads projected by existing techniques (see *The Third Branch*, October, 1975, p. 7). The committee said the major

(See FORECASTING page 2)

### BILL WOULD EXTEND LEAA RESEARCH TO FEDERAL CRIMINAL LAW

Administration proposals for extending authority of the Law Enforcement Assistance Administration contain several little noticed amendments that would give the Department of Justice a major research potential in federal criminal justice. It also would extend the Attorney General's authority over federal funding of research into civil and criminal justice at the state and local levels.

The bill, S. 2212, is undergoing hearings in the Senate Judiciary Subcommittee on Criminal Laws and Procedures headed by John L.

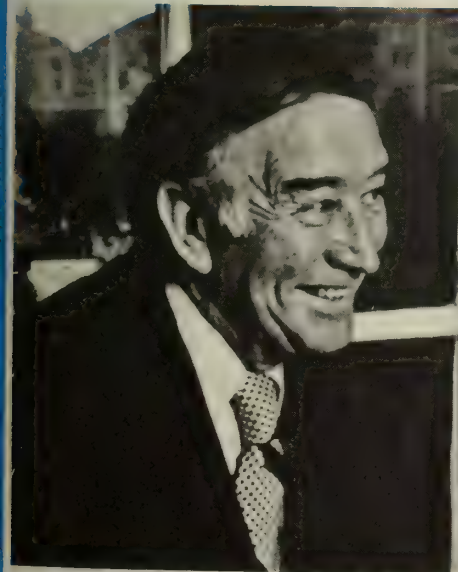
(See RESEARCH page 3)

### JUDGE MURRAH EULOGIZED

Judge Alfred P. Murrah, Director of the Federal Judicial Center for four and one-half years until he was required by law to step down last year, died October 30 in an Oklahoma City hospital. Judge Murrah's death followed a long illness. Despite his failing health he continued to participate in Center programs and to hear cases in the Courts of Appeals. Out of the nearly 50 cases in which he participated as a panelist after leaving the Center, he wrote 15 of the opinions, some dictated from the hospital where he was confined for the last three months.

He was one of the youngest men ever appointed to a federal judgeship when President Roosevelt nominated him at 32 to the U.S. District Court for Oklahoma in 1937. Three years later he was appointed to the U.S. Court of Appeals for the Tenth Circuit and in 1959 he became Chief Judge. He remained in that position, carving out a national reputation as a scholarly jurist, until he was selected to be the second Director of the Federal Judicial Center in 1970.

(See EULOGY page 2)



Judge Alfred P. Murrah



(EULOGY from page 1)

In a statement issued from the Supreme Court, Chief Justice Warren E. Burger said, "I speak for all the members of the Supreme Court and all federal judges in expressing sadness at the death of Judge Alfred Murrah. For nearly forty years he has been one of the foremost figures in the American judiciary. He was a dynamic leader for judicial improvement. Few men will equal his contributions to the improvement of justice."

State and federal judges, former law clerks, law professors, and friends from throughout the country gathered in Oklahoma City November 3rd to pay their last respects.

A group of 26 federal judges led by Mr. Justice Tom C. Clark (U.S. Supreme Court, Ret.) and including Federal Judicial Center Director Judge Walter E. Hoffman served as honorary pallbearers.

During the funeral Judge Murrah was eulogized by Rev. De L. Hinckley, Jr. Pastor of the Crown Heights Methodist Church, as "a man who was with God and with man. He was a man who walked with any man. He walked the depths of humanity."

The Judicial Panel on Multidistrict Litigation which Judge Murrah chaired from the time of its creation, announced a Resolution of "loving tribute to the memory of Alfred P. Murrah... [an] outstanding leader of the federal judiciary of the United States of America, just and learned judge extraordinary, and great human being."

11

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#### REVIEW DENIED IN EMPLOYEE TAX CASE

The Supreme Court has declined to review a class action, brought by the National Treasury Employees' Union, that challenged the government's right to tax the seven percent of salary federal workers contribute to their retirement fund.

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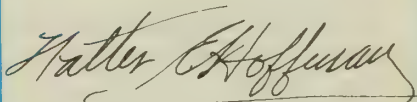
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#### From the Director . . .

*Judge Murrah's death marks the end of a judicial career which has no parallel. As an innovator in the field of sentencing institutes, pretrial proceedings, and complex or protracted litigation; and as the founder of educational seminars for judges, magistrates, bankruptcy judges, probation officers, clerks and members of other branches of the judicial family, Judge Murrah devoted his life to the improvement of the judicial system.*

*When the Federal Judicial Center was organized in 1968, Mr. Justice Tom C. Clark was appointed as its first Director and, under his leadership the Center was launched. When Justice Clark reached the mandatory age of retirement in 1970 Judge Murrah was his logical successor. It was under Judge Murrah's guiding hand that the Center continued to grow and serve the judiciary. His service as Director for a period of four and one-half years was the culmination of his great career as a public servant. But, despite his retirement as Director, he continued to chair seminar programs as long as his health permitted, acting as Assistant Director at my personal request.*

*No man had greater love for his fellow man, and no person was more beloved by those who were privileged to know him.*



Judge Walter E. Hoffman  
Director,  
Federal Judicial Center

(FORECASTING from page 1)

weakness in current forecasts is their inability to adequately incorporate the impact of future events

The new report cautions that while test results to date indicate important advances over past prediction efforts, "nothing but experience will confirm that these forecasts are accurate". In the meantime, researchers are continuing their evaluations by using their new techniques to "predict the past" i.e., to "predict" the caseload for given year in the past and compare the prediction to the actual data. Key innovations in the new procedures include:

(1) Use of an "indicator based mathematical model that relates changes in caseloads to changes in demographic, business and social measures; and

(2) The identification and evaluation of 33 "surprise events", i.e. future developments that also can be expected, if they occur, to impact on federal court caseload. The "surprise events" include such possible developments as adoption of no-fault auto insurance, increased decriminalization of drug use, and limitations on availability of federal habeas corpus.

Forecasts have been made for 1979, 1984, and 1995 for filings in 42 categories of civil and criminal cases that account for 80 percent of district court caseloads. They have been developed individually for 88 district courts, the circuit and the nation as a whole. Base data is drawn from actual filings in the period 1950-1970.

Director of Research, William J. Eldridge, commenting on the report, gave the project's Advisory Committee a "large measure" of the credit for the success of the project to date. The committee has served two major functions: (1) developing a list of 158 "indicators" for individual case categories and estimating their utility as signals of caseload change for each category; (2) assisting in the final selection of the "surprise event" and estimating their impact on each case category. 11



## JUSTICE DOUGLAS RETIRES

Supreme Court Justice William O. Douglas who has served on the Court longer than any other Justice in history, 36½ years, retired November 12 because of ill health.

In a statement released from the Supreme Court, The Chief Justice said, "Justice Douglas' retirement brings to a close a career unique in the annals of this Court. His service spans the tenure of five Chief Justices and sets a record that may never be equaled.

"Since January, 1975 he has struggled valiantly to overcome the limitations imposed by illness and his courage and willpower have earned him the admiration of his colleagues on the Court. We devoutly hope that once relieved of the taxing work of the Court his health will improve and he will again be able to pursue the wide

(See DOUGLAS page 7)

## RESEARCH from page 1)

McClellan (D-Ark). It would extend LEAA's authority through 1981 and increase annual funding authority to \$1.3 billion. But it also contains key amendments that would:

Authorize LEAA's research arm, the National Institute of Law Enforcement and Criminal Justice, "to conduct such research, demonstrations or special projects pertaining to new or improved approaches, techniques, systems, equipment and devices to improve and strengthen such federal law enforcement and criminal justice activities as the Attorney General may direct."

Change the Institute's name to the National Institute of Law and Justice and extend its authority to fund research into state civil as well as criminal justice;

Specifically put LEAA under the "policy direction" of the Attorney General;

Give the Attorney General, instead of the LEAA administrator, authority to appoint the Director of the Institute;



Attorney General Edward H. Levi (left) was among dignitaries applauding as a mosaic portrait of Senior U.S. District Judge William J. Campbell (right) was unveiled at recent ceremonies dedicating Chicago's 26 story Federal Metropolitan Correctional Center. Mrs. Campbell joined in the applause. A plaque also unveiled cites Judge Campbell for "leadership, vision, and untiring effort" in making the facility a reality.

- Further strengthen the Attorney General's control over LEAA and the Institute by giving him authority to appoint a National Advisory Board to advise him on LEAA's national discretionary grant programs and Institute projects.  
LEAA presently has authority to fund research only in the field of criminal justice at the state and local levels.

Both the Department of Justice, through its Office of Policy and Planning, and LEAA through its Institute, have taken preliminary steps to implement the anticipated new authority by establishing new desks for that purpose. ¶¶

## CIRCUIT JUDICIAL CONFERENCES 1976

Circuit	Date	Place
D.C.	May 27-29	Hershey, PA
First	*May 14-15	*Boston, MA
Second	Sept. 9-12	Buck Hill Falls, PA
Third	Sept. 19-20	Philadelphia, PA
Fourth	*June 27-30	*White Sulphur Springs, WV
Fifth	May 24-27	Houston, TX
Sixth	May 12-15	Columbus, OH
Seventh	May 10-12	French Lick, IN
Eighth	June 27-30	Hot Springs, AR (To be held jointly with the Tenth Circuit)
Ninth	July 25-27	Spokane, WA
Tenth	June 27-30	Hot Springs, AR

\*Tentative



## JUDICIARY APPROPRIATIONS ARE APPROVED

President Ford signed into law last month H.R. 8121, authorizing appropriations for the judiciary for Fiscal Year 1976 ending June 30 and for the transition period from July 1 through September 30, 1976.

Under the provisions of the bill, the full amount requested for judicial salaries was approved as well as amounts requested for court-appointed personnel, juror fees, and salaries for both magistrates and bankruptcy referees.

In addition, 518 new positions, including 301 deputy clerks for the district courts, 14 special legal staff positions for the Ninth Circuit, nine senior staff law clerks for the U.S. Courts of Appeals and 16 deputy clerks for the U.S. Courts of Appeals, were approved. However, the request for nine Deputy Circuit Executives was denied by both the House and Senate.

The Administrative Office of the U.S. Courts received approval for 29 new positions and also included funds for the annualization of 42 new positions approved in the Second Supplemental Appropriation Act of 1975 for implementation of the Speedy Trial Act.

The appropriations bill also included \$64 million for space and facilities and \$4,570,000 for furniture and furnishings.

The Federal Judicial Center received \$6.6 million of which \$2.4 million has been earmarked for COURTRAN II operations.

## SUPPLEMENTAL FUNDS REQUESTED FOR FISCAL 1975 AND 1976

The Director of the Administrative Office of the U.S. Courts on September 17 submitted a request for supplemental appropriations for "Salaries and Expenses of Referees" and for "Representation by Court-appointed Counsel and Operation of Defender Organizations."

The appropriation for "Salaries and Expenses of Referees" would provide an additional \$1,711,000 for fiscal 1976 to employ 280 additional clerical employees for bankruptcy judges to cope with present and projected increases in bankruptcy filings.

The request contemplates that these clerks will be employed for an average of six months in 1976. In fiscal year 1975 there were 254,484 bankruptcy filings compared with 189,513 in 1974, an increase of 34 percent. The Administrative Office estimates 300,000 bankruptcy case filings for fiscal year 1976, an increase of almost 60 percent over 1974.

The need for additional funds for court-appointed counsel and defender organizations is due primarily to an increase in the number of persons being represented under the Criminal Justice Act. There has also been an increase in the cost of representation, particularly with respect to Federal Public Defenders and community defender organizations due to general pay increases and increases in the cost of communications, supplies, and other office expenses of an uncontrollable nature. Increases in the fees for transcripts and in the cost of investigative, expert, and other services are contributing factors. A supplemental appropriation of \$4,500,000 was requested for fiscal

1976, of which \$1,800,000 is for the liquidation of obligations incurred in fiscal year 1975.

Hearings before the House Appropriations Committee on the proposed supplemental appropriations were held on October 29. Judge Carl A. Weinman, Chairman of the Judicial Conference Budget Committee, and Deputy Director William E. Foley and his staff members, testified in support of the requests.

The House Committee on Appropriations November 7 reported out a Supplemental Appropriations bill which includes funds for 240 additional bankruptcy clerks on a six-month basis. The bill also includes \$4,100,000 for representation by court-appointed counsel and operation of defender organizations, \$400,000 less than the amount requested.

Additional funds were also provided for the transition period July 1, through September 30, 1976. The Administrative Office is currently determining how the additional positions will be allocated to the respective courts both consolidated and non-consolidated offices, based on the established ratio of one clerk for 240 non-business bankruptcies and one clerk per 120 business bankruptcies. Bankruptcy judges will be informed soon of any new positions authorized.

## SUMMARY OF BANKRUPTCY STATISTICS

Bankruptcy Cases	FY 1974	FY 1975	% Change
Filed	189,513	254,484	34.3
Terminated	178,177	192,792	8.2
Pending	200,591	262,283	30.8

## SUMMARY OF JUROR UTILIZATION STATISTICS

	FY 1973	FY 1974	FY 1975
* Juror Usage Index	20.16	19.11	19.32
Percent Selected or Serving	56.5	58.4	60.1
Percent Challenged	15.1	15.2	16.1
Percent not Selected, Serving or Challenged	28.4	26.5	23.8

\* (This figure is calculated by dividing the total number of persons available by the total number of juries in trial, giving an average number of persons required for each jury trial day.)



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

**Antitrust.** The House Committee on the Judiciary has favorably reported (H.R. 8532), the Antitrust Parens Patrie Act which contains a number of provisions which will affect the district courts. Its primary effect will be to authorize state attorneys general to bring civil actions in the district courts of the United States under Section IV of the Clayton Act on behalf of natural persons residing in that state injured by any violation of the antitrust laws. The district court will have discretion to order that the state attorney general proceed as a representative of any class or classes of injured persons notwithstanding the fact that the state attorney general may not be a member of such class or classes. The purpose of the bill as stated by the Judiciary Committee is to compensate the victims of antitrust offenses, to prevent antitrust violators from being unjustly enriched and to deter antitrust violations.

**Garnishments.** The Department of Justice has sent Congress a draft bill which would resolve many of the questions and problems relating to garnishment of the pay of federal employees for alimony and child support. Under the draft bill, the district courts would have jurisdiction only if an agency of the government were subjected to two orders for garnishment from different jurisdictions with respect to the pay of one employee.

**Federal Criminal Code.** S. 1, introduced by Senator McClellan in January, and under study for the last four years, was reported by the Judiciary Subcommittee on Criminal Laws and Procedures to the full Senate Judiciary Committee October 23. As presently written, the bill is 799 pages long. The report will be approximately 1300 pages. A companion bill, H.R. 3907, is pending in the House Judiciary Committee, but action is not

expected until after S. 1 is passed by the Senate.

**Bankruptcy.** H.R. 6184, to place the salaries of bankruptcy judges under the control of Congress rather than the Judicial Conference passed the House on October 23.

**Employees' Life Insurance.** H.R. 7222, to increase the contribution by the Federal Government to the cost of employees' group life insurance was defeated on October 22 in the House.

**Speedy Trial Act.** H.R. 10598, which would amend the Speedy Trial Act to clarify the status of reporters on the District Planning Groups, was introduced on November 6 by Congressman Rodino. This bill embodies the proposal of the Judicial Conference.

**Rules of Evidence and Criminal Procedure.** H.R. 9915, to make technical amendments to the Federal Rules of Evidence, the Federal Rules of Criminal Procedures and to related provisions of Titles 18 and 28 of the United States Code, passed the House on November 3. The legislation makes technical corrections, including corrections of spelling and grammatical errors. Rule 410 of the Rules of Evidence will be changed to conform to the wording of Federal Rules of Criminal Procedure 11(e)(6). The bill would also strike two paragraphs of Rule 16 of the Federal Rules of Criminal Procedure which were made unnecessary by enactment of the Criminal Procedure Amendments Act.

**Bills Introduced.** H.R. 10439, to provide for the review of the behavior of individual justices and judges by three-judge panels, was introduced October 30, by Congressman Findley and referred to the House Judiciary Committee.

Numerous bills to amend the Bankruptcy Act with respect to the bankruptcy of large municipalities recently have been introduced.

H.R. 10574, to amend Section 142 of Title 28, USC, relating to the furnishing of accommodations to judges of the Courts of Appeals, was introduced by Congressman Carter and referred to the House Judiciary Committee.

## F.J.C. PUBLISHES FIRST ADDENDUM TO CASSETTE CATALOG

Following the enthusiastic response to the May, 1974 publication of the initial cassette catalog, FJC Director Judge Walter E. Hoffman decided to publish an *Addendum to the Catalog of Cassettes*. The 101-page booklet contains more than 250 edited recordings of Federal Judicial Center seminars. Seventy-nine of the new cassettes cover topics of primary interest to judges while 72 are aimed primarily at probation officers.

Judge Hoffman, in a foreword to the new *Addendum* said, "We are pleased with the number of responses in the form of requests received in the Education and Training Division for cassette recordings of our various subjects. This interest, together with the many new presentations of our very able speakers, has prompted the expansion of our library and necessitated the publication of our first *Addendum*."

Judge Hoffman pointed out that, "This *Addendum* does not repeat anything published in the original catalog but continues where that publication left off and, together, they constitute a current listing of all recorded seminar presentations now available on loan for two weeks from our Education and Training Division."

He added that the Center welcomes the requests from all interested members of the Federal Judicial System.

## The Third Branch

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### Co-editors

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U.S. Courts



## APPELLATE JUSTICE COUNCIL RELEASES FINAL REPORT

The report and recommendations of the Advisory Council on Appellate Justice are included in the final volume of materials published in conjunction with the National Conference on Appellate Justice. The Conference, held last January, was the culmination of a three-year study of all aspects of the judicial process on the appellate level. (See *The Third Branch*, Vol. 7, Feb., 1975.) The study and the closing conference were co-sponsored by the National Center for State Courts and the Federal Judicial Center.

By design, no consensus statements were issued; however, some group discussions on given topics resulted in strong agreements. In those instances the group reporters submitted consensus statements to the Advisory Council so they might be incorporated in the summary of the Conference's deliberations.

### Recommendations

Concluding that appellate procedures must be changed to meet current demands on state and federal courts, the Council has made recommendations in seven areas. Some of the recommendations are:

- **Oral Argument.** Oral argument should be allowed in most cases. It may be curtailed or eliminated in certain instances. Alternatives to oral argument through personal audience should be considered by appellate courts.
- **Briefing.** In an effort to reduce litigation costs and speed up the processing of cases, the courts should consider devices to reduce or eliminate costs and time elements.
- **Opinions.** When appropriate, opinions may be very brief (as short as a mere citation of a controlling statute, rule or precedent). In addition, opinions should not be published unless they meet certain standards; they may be delivered orally if a record is made; and they need not be required for orders on motions, special writs or inter-

locutory matters.

A model rule on publication of opinions has been drafted by the Council and is concluded in the statement of recommendations. Included in the model rule is a prohibition against citation as precedent of an unpublished opinion by any court or in any paper presented to a court.

- **Central Staff.** Courts burdened with heavy caseloads need adequate staff assistance to assist the judges but such employees should never perform strictly judicial functions. Areas where supporting personnel can be of great assistance to the judges are: Screening, preparing memoranda on given points, and monitoring cases (e.g., handling stipulations, conducting settlement conferences, and contacting counsel for further briefing on certain issues).
  - **Transcripts.** Appellate courts, acting through their managerial officer, should foster a system that assures timely delivery of transcripts. To this end, available technology should be used. In felony cases, where appeal is likely, transcripts should be made immediately after sentence. In civil cases, devices should be developed to condense or eliminate transcripts.
  - **Review in Criminal Cases.** Appellate courts should be assisted in expediting felony appeals by an able court administrator supported by adequate staff who would: supervise preparation of the appellate record; promptly handle procedures for court appointed counsel; monitor briefing deadlines to prevent undue delay. Continuity of counsel (or his office) should be maintained from trial to appeal until dismissed by the appellate court.
- The sentencing process should be improved. Some form of review of sentencing is needed.

- **Advisory Committees; Bar Involvement.** Three mechanisms should be adopted to formulate, implement, monitor and review each appellate court's procedures: Publication of the court's internal operating procedures; establishment of rule making procedures which will permit comment from the bar before rules are adopted or changed; and creation of an advisory committee to counsel the court on all matters relating to the processing of cases.

II II

## STAFF POSITIONS OPEN AT D.C. CIRCUIT COURT

The United States Court of Appeals for the District of Columbia is seeking applicants to fill two staff positions. One is the Clerk of the Court. The present Clerk, Hugh Kline, will leave in December. The other position is Chief Staff Counsel, a newly-created position to supervise the work of the Court's law clerks and to perform a principal role in ongoing analysis and management of the Court's cases.

Salary in each instance is up to \$31,500, at present, with usual federal benefits.

Applicants should contact Charles E. Nelson, Circuit Executive, 4826 United States Courthouse, Washington, D.C. 20001

II II

## PRISONERS HAVE SAY IN NEW PAROLE BOARD RULES

The U.S. Board of Parole has published revised rules (40 FR 41328, September 5, 1975) on parole, release, supervision and recommitment of prisoners, youth offenders, and juvenile delinquents.

For the first time, the Board's rules reflect statements and comments, including those from individual prisoners and prisoner committees, filed in compliance with the Administrative Procedure Act, 5 U.S.C. Par. 553 (b) (3).



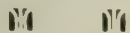
(DOUGLAS from page 3)

range of interests that have commanded his interest all his life and for the [almost] 37 years on the Court. Even if he now leaves physical mountain climbing to others, there are mountains in the world of ideas that many Americans wish to hear Justice Douglas address.

"A year ago he expressed his faith in our country and his own basic belief when he said, 'I think the heart of America is sound. I think the conscience of America is bright. I think the future of America is great.'

"This shows Justice Douglas as a believer in our country and in the values that have made it great.

"I know I speak for all the Justices when I express our heartfelt wish for improved health and long life to our friend and colleague."



## HEARINGS HELD ON BILINGUAL COURTS BILL

The House Judiciary Subcommittee on Civil and Constitutional Rights held hearings recently on bills which would provide court-appointed interpreters for non-English speaking parties in both criminal and civil trials held in federal courts.

S. 565, calling for simultaneous translation of all testimony in either civil or criminal trials, was passed by the Senate earlier this session.

This bill, as passed by the Senate, would specify the circumstances when an interpreter must be provided to translate all or part of the court proceedings for the benefit of a non-English speaking party or when a witness does not speak English.

The bill also imposes administrative duties on the Administrative Office of U.S. Courts in relation to certification and use of interpreters. The Senate Judiciary Committee, in its report on S. 565, said that, "Simultaneous translation of all courtroom proceedings is manda-

## FEDERAL PRISON POPULATION HITS TEN YEAR HIGH

The total number of inmates in the Federal Prison System is 24,176, the highest it has been in 10 years, according to the Federal Bureau of Prisons.

Director Norman A. Carlson said last month that the nation's prison system as a whole, state and federal, is "... on the threshold of a population explosion."

His estimates are based on studies by LEAA which indicate that the combined inmate population of state and federal prisons grew by 4.2 percent from the end of 1972 until the end of 1973 and on other recent studies.

The Director made these points:

- "The most important reason why the number of inmates is rising is that crime itself is on the increase. This growth in crime rates will affect prison population in two ways. First, more crime generally means more arrests, more convictions and more people sentenced by the courts to

serve a period of time in an institution. Secondly, the tremendous increase in crime rates may very well foster a change in attitude on the part of Congress and the state legislatures.

- "Unless the situation improves, unless crime rates go down, the public may demand that their elected representatives take steps to crack down on serious offenders.
- "We may be able to lighten the burden on jail and prison facilities to some extent by an increased use of community-based corrections, such as probation, parole, halfway houses and other programs designed to keep some offenders under supervision without incarcerating them in traditional correctional institutions."
- Three types of offenders should definitely be sent to prison: the white-collar criminal, career criminals and persons who pose a danger to society."

tory if the non-English speaking party is to be accorded his Sixth Amendment guarantees of the right to counsel and the right of confrontation."

On October 23, Assistant Attorney General J. Stanley Pottinger testified on behalf of the Department of Justice and explained why the Department opposes any bilingual courts bill presently before the Congress.

He said, in summary, that the bills suffer from drafting problems and "... the failure of the legislative record to date to demonstrate that existing protections are inadequate..."

Moreover, he said the problem of Puerto Rico where less than half the population can adequately understand English is being remedied by the Administration which has sent to Congress legislation calling for the use of Spanish in that court. This bill was introduced by Judiciary Committee Chairman Rodino (H.R. 6318).

### Credit Groups Affected

## HOUSE BILL WOULD INCREASE FEDERAL JURISDICTION

The House Committee on Agriculture November 1 reported out H.R. 7862 which would amend the Farm Credit Act of 1971 by increasing credit eligibility for farm cooperatives and "... enlarge the access of production credit associations to Federal district courts."

Under present law, federal district courts do not have jurisdiction (except in certain limited situations) over any suit by or against a production credit association.

The report states that the amendment will permit production credit associations "the same access to the Federal district courts as is enjoyed by private citizens, corporations, and other legal entities."

The views of the Administrative Office of U.S. Courts were not solicited. The Department of Agriculture submitted a statement supporting the bill. ¶



# PERSONNEL

## Appointment

Ralph G. Thompson, U.S. District Judge, (W.D. Okla.), Oct. 20

## Nominations

John F. Grady, U.S. District Judge, (N.D. Ill.), Oct. 20

Gerald B. Tjoflat, U.S. Circuit Judge, (5th Cir.), Nov. 3

## Confirmation

Eugene E. Siler, Jr., U.S. District Judge, (E. & W. D. Ky.), Nov. 11

## Retirement

Justice William O. Douglas, Supreme Court of the U.S., Nov. 12

# DOJFC calendar

Nov. 25 Federal Judicial Center Board Meeting, Washington, DC

Dec. 1-4 Seminar for Chief Pre-trial Service Officers, Washington, DC

Dec. 4-5 Judicial Conference Subcommittee on Judicial Statistics, Washington, DC

Dec. 5-6 Workshop for Eighth Circuit District Judges, St. Louis, MO

## THE THIRD BRANCH

VOL. 7, NO. 11 NOVEMBER 1975

## THE FEDERAL JUDICIAL CENTER

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OFFICIAL BUSINESS

Dec. 11-12 In Court Management Training Institute, Norfolk, VA

Dec. 17-19 Seminar for Bankruptcy Chief Clerks, Ft. Lauderdale, FL

## 1976

Jan. 5-6 Judicial Conference Subcommittee on Judicial Improvements, Houston, TX

Jan. 5-6 In Court Management Training Institute, Miami, FL

Jan. 6 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC

Jan. 8-9 Workshop for District Judges (5th Circuit-East), Sea Island, GA

Jan. 12-13 Workshop for District Judges (5th Circuit-West), Brownsville, TX

Jan. 15-16 In Court Management Training, Institute, Brownsville, TX

Jan. 16 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, DC

Jan. 19-20 In Court Management Training Institute, Houston, TX

Jan. 26-27 Judicial Conference Jury Committee, Scottsdale, AZ

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# The Third Branch

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## Bulletin of the Federal Courts

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DECEMBER 1975

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### CENTER MOVES INTO FULL PILOT OPERATION WITH COURT COMPUTER SYSTEMS

The Federal Judicial Center is in the midst of developing and implementing computerized local court management information systems for both district and appellate courts.

During the current calendar year, the project was substantially expanded as a direct result of the additional funds granted by Congress for the express purpose of accelerating the installation of computer systems to assist district courts in meeting the requirements of the Speedy Trial Act of 1974.

During the past year, the FJC took a major step forward in its computer development program following an extended period of experimentation. This experimentation period was a deliberate attempt to avoid using computer technology merely because it existed and to make sure that software would be designed to meet the actual needs of the courts.

The primary goal of the project was to determine how automatic data processing could help judges implement the principles of effective civil and criminal case management which are taught at seminars for district judges and other key judicial personnel.

Priority was also given to incorporating into a computer system the best practices and procedures which are currently used by parajudicial personnel whose work supports judges when they apply these management principles. The secondary priority was aimed at more traditional techniques such as better record keeping and collecting more accurate statistics.

The computerization project has gone through several phases each representing both an evolutionary step forward and a conceptual change. The original version of the system, COURTRAN I, was operated in several courts using rented computer time.

Last year, the development of COURTRAN II, an advanced system to be operated in minicomputers with general purpose processing capabilities, was initiated. Development of the civil case version was completed and is now in operation. The criminal case system has now

(See COMPUTER pg. 2)

JUDGE JOHN PAUL STEVENS  
(CA-7) NOMINATED FOR  
U.S. SUPREME COURT



President Ford November 28 nominated Judge John Paul Stevens (CA-7) to the Supreme Court to replace Justice William O. Douglas who retired November 12 because of ill health.

Judge Stevens, 55, was appointed to the Seventh Circuit Bench in 1970 after a distinguished career in the legal profession which included private practice, teaching, and a stint of public service. The President said he believes Judge Stevens is the person "best qualified to serve as an Associate Justice of the Supreme Court. [He] is held in the highest esteem by his colleagues in the legal profession and the judiciary, and has had an outstanding career in the practice of law as well as on the federal bench. I am confident," the President continued, "that he will bring both

(See STEVENS pg. 2)

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(COMPUTER from pg. 1)

been completely designed and software development is nearing completion.

The design of each system contains several software innovations which make it unique in the field. Among these are: the information engram concept, a transition matrix for court events, specially created system dictionaries, a syntax and grammar for court processes, a special modular software structure, a technique for monitoring speedy trial plans, a status distinguishing technique which identifies situations requiring court action, and a free-floating data entry technique which allows non-technical personnel to use the system. The efficacy and effectiveness of these innovations in combination were proven in experimental operation in three courts in the COURTRAN I phase.

Although priority has been given to the criminal and civil case systems these are only two of the applications planned for COURTRAN. Other applications include (1) jury selection and utilization, (2) appellate case processing, (3) financial accounting, (4) attorney conflicts of engagement management, (5) computer-aided transcription editing, and (6) bankruptcy petition management. The first version of a financial system for use initially by the Administrative Office and later by court clerks' offices is nearing completion.

The design process for both jury selection and appellate case applications has been initiated but neither system will be ready for testing for approximately a year. All of these applications are designed to have the dual effect of reducing clerical effort while enhancing administrative effectiveness in the federal courts.

Equipment used during fiscal year 1975 consisted of two mini-computer systems. The center had planned to add a third minicomputer system and conduct pilot operations in six courts by having terminal stations in three courts connected to the three computers. These plans were revised when it

became clear that the passage of the Speedy Trial Act imposed data collection and monitoring requirements on all districts which would require broader scale installation of COURTRAN II. Because it takes several years for an effort of this magnitude it was necessary to start immediately. The FJC thereupon asked the Congress for funds to install computers capable of supporting a minimum of 65 COURTRAN installations.

An initial amount of \$1,020,000 was requested as a supplement to the fiscal year 1975 budget. The remainder of the money felt essential for the completion of the project was included as "no-year" money in the 1976 budget request.

In the hearing before the House Appropriations Subcommittee on the FY 1975 Supplemental it was stated that the first task to be undertaken would be a communications network survey. The purpose of this survey was to determine the optimum geographic location of computing equipment and the opti-

mum mix of computer sizes for the COURTRAN II applications under consideration.

This study indicated that serious thought should be given to a different allocation of computing power than originally planned. After a thorough analysis the advantages of a combination of three larger regional computers tied into much smaller computers in some courts, and terminal stations in every court, represented a more economical approach than the original plans.

During the first half of fiscal year 1976 there will be one larger computer installed in the District of Columbia District Court with terminal stations in five other districts. Further expansion will be made during the latter half of fiscal 1976. Although this is a change in equipment allocation, there has been no change in the project objectives. Instead this new evolutionary step represents a better method for achieving the objectives for which the Congress has provided funds.

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(STEVENS from pg. 1)

professional and personal qualities of the highest order to the Supreme Court."

Warren Christopher, a Los Angeles attorney and Chairman of the ABA's Standing Committee on the Federal Judiciary which investigates and rates all Supreme Court nominees, said Judge Stevens met "high standards of professional competence, judicial temperament and integrity" and that he therefore merited the Association's highest rating. He added: "To the Committee, this means that ... Judge Stevens is one of the best persons available for appointment to the Supreme Court."

Judge Stevens, was born and reared in Chicago. He received his B.A. degree from the University of Chicago in 1941. After graduation, he served in the U.S. Navy from

1942-45 and was awarded the Bronze Star.

Following his military service, he entered Northwestern University School of Law and was graduated in 1947 first in his class. He then entered private practice in Chicago and also taught at Northwestern University and the University of Chicago Law Schools.

In 1951, he served as an Association Counsel to the House Judiciary Subcommittee on Monopoly and from 1953-55 was a member of the Attorney General's Committee on Antitrust Laws. As a former law clerk at the Supreme Court, he is not a stranger to the building. He clerked for Mr. Justice Rutledge during the October 1947 term. Two other appointees can claim this background, Mr. Justice White who clerked for Chief Justice Vinson



during the 1946 term and Mr. Justice Rehnquist who clerked for Mr. Justice Jackson during the 1952 term.

The President sent the nomination to the Senate December 1 and Senator James O. Eastland, Chairman of the Senate Judiciary Committee, opened public hearings on the nomination December 8. ¶

James E. Macklin, Jr. Named Chief

### A.O. CREATES CRIMINAL JUSTICE ACT DIVISION

The Deputy Director of the Administrative Office of U.S. Courts, William E. Foley, has announced the establishment of a new Criminal Justice Act Division. The Division will have the responsibility of coordinating all activities regarding the implementation of the Criminal Justice Act, including defender organizations.



The new Division's Director is James E. Macklin, Jr., a 1948 graduate of West Point who received his law degree from Columbia Law School in 1955. He retired in 1975 after serving over 27 years in the U.S. Army, primarily with the Judge Advocate General's Corps. At the time of his retirement, he was Chief of the Criminal Law Division of the Judge Advocate General's office in Washington, D.C. In this position, he supervised military justice throughout the U.S. Army. In addition, he was Chairman of the Joint Services Committee on Mili-

tary Justice and responsible for drafting proposed legislation designed to improve the military's criminal justice system.

The enactment of the Criminal Justice Act in 1964 established a system designed to be operated in accordance with plans drawn up by each district for the appointment of counsel for persons accused of federal crimes, other than petty offenses, who are "financially unable to obtain adequate representation." The Act also provides for the compensation of appointed counsel and the provision of defense services other than counsel. In 1970, the Act was amended to permit qualified districts to establish defender organizations to furnish representation with the proviso that private attorneys would be appointed in a substantial proportion of the district's cases.

Prior to passage of the 1964 Act, attorneys representing indigent defendants in federal courts did so, in most instances, on a *pro bono* basis. Following passage of the Act, a schedule of fees was established which allowed private attorneys to be paid by the government. For example, for work done out of court, attorneys were paid \$10 per hour and for courtroom representation, \$15 per hour.

The 1970 Act increased the scale of payments from \$10 to \$20 and \$15 to \$30 respectively, broadened the coverage by expanding the services provided for defendants, and created Public Defender Organizations. Two types of defender organizations are now in existence: the Federal Public Defenders who are federal employees paid by the A.O. and Community Defender Organizations which provide similar services but are paid through the Administrative Office in amounts authorized by the Judicial Conference of the U.S.

Since the Act was amended, 22 Federal Public Defender and 8 Community Defender Organizations have been established. These have proved so effective, the Deputy Director said, that other districts are presently considering establishing such organizations.

### A.O. ASKS CONGRESS FOR ADDITIONAL MAGISTRATES

The Administrative Office of U.S. Courts has asked Congress for an additional \$404,000 to increase the number of full-time and part-time magistrates.

In its request for supplemental funds for Fiscal 1976, the A.O. said the Judicial Conference last September authorized the appointment of five new full-time magistrates, the conversion of four part-time and one combination position to full-time status, one new combination position, and four new part-time positions.

The A.O. said the recurring annual cost of providing these additional magistrate positions is estimated at \$604,000 which includes supporting personnel required to staff the new full-time magistrates. A request for funds for this purpose is included in the budget for Fiscal 1977 but, by providing the requested supplemental funds now, the A.O. will be able to make the necessary appointments and changes in the coming months rather than delaying action until October 1, 1976, the beginning of the 1977 Fiscal Year.

In its justification for the magistrates' supplemental funds, the A.O. told Congress that, "The courts, on the whole, are responding very positively to the expressed desire of the Congress by progressively delegating 'additional duties' in civil and criminal cases to magistrates."

In light of increased filings of both civil and criminal cases in district courts, the failure of the Congress to provide additional judgeships and the requirements imposed on the district courts by the Speedy Trial Act of 1974 the A.O. concluded, "... we believe it is imperative that the [changes affecting] new magistrates, and other changes in arrangements which have been approved by the Judicial Conference, be implemented at the earliest possible date." ¶



## PROPOSED NEW CRIMINAL CODE STIRS CONTROVERSY

For three years S. 1, the bill to codify all federal criminal law, has been considered and discussed at great length by key committees of Congress.

### The Senate

Almost 800 pages in length, the bill obviously has embraced a great deal. But the problem is not only that it is a very complex piece of legislation, but also that it contains some highly controversial provisions. For example, the prior federal death penalty in the present version of S. 1, is changed, making a death penalty mandatory (under certain conditions) after conviction for treason, sabotage or espionage. Some feel such a penalty should be codified by a separate bill dealing with death penalty crimes only. Another controversial section adopts the proposal of the Commission on Revision of the Federal Criminal Code which would reenact the 1968 law on wiretapping. But recent cases limiting Presidential powers in this area will now require changes in S. 1 to comport with these cases. The list goes on and on—gun control, obscenity, drug offenses, national security, insanity defense.

### The House

Meanwhile Congressmen Robert W. Kastenmeier, Don Edwards and Abner J. Mikva, all members of the code revision commission, have introduced an alternate bill in the House. Their announced purpose is to accomplish what the Senate wants—a simplification of existing complexities in federal laws—without endangering civil liberties. Objections from many civil libertarians have been one of the time-consuming aspects the drafters have had to contend with.

Present plans appear to call for continued hearings in the Senate Judiciary Committee during December, with consideration by the Senate early in the year. If a Senate bill is passed, the House is expected to begin its hearings on the Kastenmeier-Edwards-Mikva

bill or possibly other House legislation in competition with others in both the House and the Senate.

### Conference of Metropolitan Chief Judges

In October the Conference of Metropolitan Chief Judges held a meeting to consider several matters, including S. 1. This group of federal district judges represents courts which handle 56 percent of all civil cases in the federal system and more than 75 percent of all criminal cases. Out of this meeting came a resolution which was sent by Judge William J. Campbell, on behalf of the Conference, to the Chairmen of both the Senate and House Judiciary Committees. The Resolution reads:

**"RESOLVED:** We, the Conference of Metropolitan Chief Judges handling in excess of 75 percent of all federal criminal cases throughout the United States, express grave concern as to the proposed revision of the criminal code now pending before Congress, by reason of the many changes in existing laws and procedures as well as the approaches to the language of the specific crimes. We recommend that S. 1 not be approved by Congress."

### Six Regional Conferences

#### PROGRAMS STAGED ON SPEEDY TRIAL

Six regional orientation conferences on implementation of the Speedy Trial Act were staged during the Fall.

The programs, designed to aid district planning groups in assessing and managing their planning responsibilities, were the product of a coordinated effort by the Federal Judicial Center, the Administrative Office of the U.S. Courts, and the Department of Justice.

Among the attendees representing the various districts were: Federal Judges, Magistrates, Clerks of Court, and U.S. Attorneys. In addition, several districts had Federal

Public Defenders and private attorneys in attendance. Under the Act, districts also appoint a reporter to coordinate the activities of the planning group and many of the reporters who have been appointed attended one of the conferences.

The initial conference was held in Chicago where members of the planning groups of the districts within the Sixth and Seventh Circuits assembled for two days to discuss potential problems of compliance with specific provisions of the new law, the use of new docket forms, the expanded statistical record keeping required by the law, and functions of the districts' planning groups.

In addition to hearing the formal presentations, the participants divided according to their functions and met in workshop sessions to pinpoint foreseeable difficulties and share applicable techniques.

Principal presentations were made by Anthony Partridge, Speedy Trial Act Coordinator, Federal Judicial Center; Norbert A. Halloran, Speedy Trial Act Coordinator, Administrative Office; Ralph B. Guy, Jr., U.S. Attorney for the Eastern District of Michigan; James A. McCafferty, Chief, Statistical Analysis and Reports Branch, Division of Information Systems, Administrative Office; and Steven Flanders, Director, District Court Studies Project, Federal Judicial Center.

Following the Chicago conference, the program underwent minor revisions and five conferences subsequently were held nationally.

Many districts expressed confidence that they were already in compliance with the final time limits of the Act which become effective July 1, 1979. Others voiced concern over the additional burdens of record keeping, the need to revise grand jury procedures, the definition and notation of "excludable time", and the potentially detrimental effect of the Act's imple-



mentation on the civil calendar.

In some instances the conferences provided the initial opportunity for members of particular planning groups to meet and discuss their problems.

Under the Act, the district courts are required to submit a transitional plan by June 30, 1976 and a final plan by June 30, 1978.

The Judicial Conference's Committee on the Administration of the Criminal Law is completing an outline to assist the district planning groups in carrying out their functions. ■

### PRESIDENT HONORS JUDICIARY WITH WHITE HOUSE DINNER

President and Mrs. Ford, reviving a common practice during earlier years, honored the federal judiciary at a White House dinner on November 24.

In addition to the Justices of the Supreme Court and all Circuit Chief Judges, there were included the three top officers in the Department of Justice, ranking members of both the House and Senate Judiciary Committees, the Directors of the Federal Judicial Center and the Administrative Office, the President of the American Bar Association and members of the White House staff who deal with legal matters. Representing the Conference of Chief Justices was its Chairman, Chief Justice Charles S. House of Connecticut.

In a toast to the Judiciary, the President commended the judges and expressed gratitude for an independent Judiciary. Some of the President's remarks follow:

"With a clear understanding of history, the framers knew that an independent Judiciary, the guardian of a written Constitution, is essential to the preservation of individual liberties under a Government of limited powers. Our strong judicial system offers the world an example of how an independent Judiciary can restrain the other branches of Government when they over-reach and, on occasion, force them to

### William T. Barnes Retiring

### NEW A.O. PERSONNEL DIVISION CHIEF NAMED



William T. Barnes

Deputy Director William E. Foley has announced that R. Glenn Johnson will take over as Chief of the A.O.'s Personnel Division on January 5. He will succeed William T. Barnes who is retiring.

The new Personnel Division Chief has held a variety of positions in the personnel field prior to his selection including work with the Navy Department, the Office of Economic Opportunity, the Department of Health, Education and Welfare and the Community Services Administration.

He holds a B.A. from the University of Maryland and has done graduate work at both George Washington and American Universities.

meet their responsibilities under our Constitution.

"The American legal system, we all know, has produced many giants of law, both of the bench and of the bar. They symbolize the genius and wisdom of two centuries of jurisprudence which has produced from men and women of differing political philosophies a great historical precedent.

"It seems to me, Mr. Chief Justice, that our great pride is not only in a few outstanding individuals, it is in the many able and honest jurists whose daily performance gives our entire Judiciary a well-deserved



R. Glenn Johnson

At the end of the year, William T. Barnes who has been heading personnel administration operations for the federal court system for many years, is retiring after 30 years of service. Mr. Barnes began working for the Administrative Office of U.S. Courts in 1945 after World War II service. Prior to his military service, he served with the F.B.I. and later worked for Congress.

Deputy Director Foley said, "Bill has asked me to convey to you his appreciation for your cooperation with him over the years in carrying out the duties of his important office, and also to say that he feels greatly honored to have served with the Judicial Branch."

reputation for competence and total integrity . . . You and your associates in the Judicial branch of the Government have kept the Constitution alive and I should say vigorous for 186 years. And it remains today our strongest guarantee of freedom for the future."

The Chief Justice, in his response to the President's toast, said, in part, "... You have not only revived a splendid and ancient custom by inviting the federal judges to your house, . . . you have honored our colleagues of the state courts. . .

(See DINNER pg. 6)



(DINNER from pg. 5)

who, in the time of George Washington and for many years thereafter, were regarded not as equals, but much superior to Justices of the Supreme Court of the United States.

"I don't think we would want to give that up, with all deference to our brothers and sisters of the state courts, but we would like to maintain parity and you have, of course, in inviting us tonight. . . . I will presume to speak with leave, Sir, for both the federal and the state judges and say that we are all very grateful to you for your hospitality and for the honor you do us by inviting us to your house." ■■

#### A.O. WORKING TO EXPEDITE PAYCHECK DELIVERIES

The Administrative Office, in response to numerous complaints regarding delayed paychecks, is exploring the possibility of entering into a contract with the U.S. Postal Service which guarantees 24-hour delivery to 100 major cities in the U.S. including those in Alaska and Hawaii.

In the interim, the A.O. has made arrangements with the Treasury Department to have the Judiciary's payroll processed on Monday nights and placed in the mail on Tuesday rather than Wednesday. However, this will shorten an already tight schedule by advancing the cutoff date for processing appointments and other payroll changes.

It is therefore very important that the A.O.'s Personnel Division be informed as soon as possible of any appointments or separations. With respect to appointments, the A.O. requests that the Oath of Office and Personal History Statement (A.O. Form 79), the Notice of Entry on Duty (Form 195) and the Tax Exemption Certificates be executed and transmitted for all employees on or before the actual entrance on duty. ■■

#### A HOLIDAY MESSAGE FROM

### THE CHIEF JUSTICE

There is little new to report at the year's end except to observe that the output of the courts reflects the continued dedication and hard work of all judges and court personnel. All this is in the face of problems and disappointments that would discourage most people. The incidence of complex and new types of litigation continues to add burdens, but somehow we seem to manage.

There is no way that the public generally can fully know of the sacrifices and burdens you are carrying to maintain the high level of dispositions necessary to keep from being inundated. Therefore, I will constitute myself "surrogate-for-the-public" and express my great admiration and appreciation for your performance as well as my confidence that it will continue in the face of all odds. I renew my assurance that we will continue to improve on all fronts.

Mrs. Burger joins me in wishing each of you a happy Holiday Season.

*Merry Christmas*

*Warren E. Burger*

#### BICENTENNIAL PLANS PROGRESS

The Bicentennial Committee of the Judicial Conference met at the Supreme Court November 24 to consider the projects which the judiciary will undertake on a national basis in celebration of the nation's Bicentennial.

The Committee discussed its planned movie series, as well as a book on the federal judiciary for lay readers. Both of these projects, which were described in greater detail in the August issue, are intended to make the citizenry aware of the role of the courts in our federal system.

The movies are being produced by Metropolitan Pittsburgh Public Broadcasting and the book is being drafted for the Committee by Professor Sidney Hyman of the University of Illinois. Both projects are being closely supervised by the members of the Bicentennial Committee.

The Committee also decided to publish a biographical directory of federal judges. The directory will contain not only a demographic biography of every federal judge, living and dead, of the circuit, district, territorial, and national courts, but will also include sections describing changes in the geographic jurisdiction of the courts.

The Committee also plans to encourage projects on the local level. For example, the U.S. Courts of Appeals are being invited to submit plans for a history of the federal courts in the geographic area within their circuit. The Committee will provide modest funding upon submission of an acceptable proposal.

Funding may also be provided for other local projects. The Committee has adopted the firm policy that funds shall not be spent merely because they have been appropriated by the Congress for the judiciary's celebration of the Bicentennial. The Committee will consider the intrinsic merit of each suggested project and make its funding decisions on a case-by-case basis. Another policy decision of the Committee is that the major projects funded by the Bicentennial budget shall be of lasting interest and usefulness to the public for many years and long after the Bicentennial year is over. ■■

### The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U.S. Courts



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

7

**Consumer Protection Act of 1975.** S. 200 passed the House of Representatives on November 6. A conference will be held on the bill. The Judicial Conference, at its last meeting, disapproved the legislation which would authorize federal courts to try consumer fraud cases, thus greatly increasing the workload of the courts.

**Consumer Product Safety Commission.** S. 644 has now been passed by both Houses, but in greatly differing versions. The House version deletes Senate language which would greatly expand the authority of the Commission to conduct civil litigation.

**Rules of Evidence and Criminal Procedure.** H.R. 9915, which makes technical and conforming amendments to these rules, to take into account the recent enactment of Criminal Rules Amendments Act, was sent to the President on December 1.

**Mandatory Minimum Sentences and Sentencing Commission.** Senator Kennedy has introduced two new bills. S. 2698, would provide mandatory minimum sentences for cases involving burglary or aggravated assault, murder in the second degree, crimes in which a handgun or other dangerous weapon is used, robbery where the victim was seriously injured, rape, trafficking in heroin, or the convicted defendant is a repeat offender. Certain limited exceptions are provided, but a post-trial hearing is required to resolve such situations.

The Second bill, S. 2699 would amend Title 18, U.S.C. to establish certain guidelines for sentencing and establish a United States Commission on Sentencing. The bill establishes certain uniform general criteria which federal courts must consider in formulating a sentence: the nature of the offense, the characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of the offense, the need for just punishment, and the requirement that the sentence act as a deterrent, and

whether other less restrictive sanctions have been previously applied to the same defendant. Judges would also have to give reasons in writing for the sentence imposed thus enabling it to be reviewed by the appellate courts.

The bill will establish an independent U.S. Commission on Sentencing in the Judicial Branch which will promulgate specific guidelines, publish data concerning the sentencing process, devise and conduct seminars, workshops and training programs for judicial personnel and others concerned with sentencing. It would also make recommendations to Congress for legislation. ■

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## COMPUTER TRANSCRIPTION TRAINING CONTINUES

The Federal Judicial Center has trained 22 court reporters in the use of computer aided transcription. This is not as many as had been anticipated, but it is hoped the number of reporters who can be involved will increase after the first of the year.

Of the 22 reporters trained, 17 are still in the pilot program. Of these, four are involved in Phase "B", meaning that they are doing their own editing on video display terminals installed in their offices. This is being done in Pittsburgh and Baltimore.

Within the next month or two it is anticipated that terminals will be installed in three more courts. This will involve 10 more reporters doing their own editing, two already in the pilot program and eight new reporters. This will also expand the project from seven to nine U.S. District Courts.

In addition, the Center is considering the involvement of a number of reporters from other districts who have expressed an interest. If the present proposals go ahead as designed it is anticipated that there will be 25 more reporters involved in the pilot project at one stage or another by June 30, 1976.

**New Federal Criminal Code.** Representative Kastenmeier has introduced H.R. 10850, his version of S. 1, entitled the "Federal Criminal Law Revision and Constitutional Rights Preservation Act of 1975". It varies from the Senate version, particularly in respect to the insanity defense, sentencing, and the substantive offenses relating to classified information, and obstruction of governmental functions.

**Bankruptcies of Major Municipalities.** The Senate Judiciary Committee has reported S. 2597, Senator Burdick's bill which will amend the bankruptcy law to permit a city to file for bankruptcy without the approval of a majority of its creditors as is now required. A grace period during which creditors could not bring suit would be provided to enable the city to devise a payment plan with the aid of the court. In addition, the city would be authorized to borrow limited funds, with the approval of the court, to continue essential operations.

The House version, H.R. 10624, was reported by the Judiciary Committee on December 1. It amends Chapter IX of the Bankruptcy Act to provide a workable procedure for the adjustment of debts of political subdivisions or agencies. The major change from current law is elimination of the consent of 51% of the creditors to the adjustment.

**Circuit Revision.** The Senate Judiciary Committee has ordered favorably reported a clean bill, not yet available, which will revise only the Fifth Circuit. It apparently will contain provisions similar to those in S. 729 dealing with that circuit.



# do justice calendar

- Jan. 5-6 Judicial Conference Subcommittee on Judicial Improvements, Houston, TX
- Jan. 5-6 In Court Management Training Institute, Miami, FL
- Jan. 6 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC
- Jan. 8-9 Workshop for District Judges (5th Circuit-East), Sea Island, GA
- Jan. 12-13 Workshop for District Judges (5th Circuit-West), Brownsville, TX
- Jan. 15-16 In Court Management Training, Institute, Brownsville, TX
- Jan. 15-16 Judicial Conference Probation Committee, Ponte Vedra Beach, FL
- Jan. 16 Judicial Conference Subcommittee on Federal Jurisdiction, Washington, DC
- Jan. 19-20 In Court Management Training Institute, Houston, TX
- Jan. 26-27 Judicial Conference Jury Committee, Scottsdale, AZ
- Jan. 26-29 Seminar for Federal Public Defenders, San Diego, CA

## THE THIRD BRANCH

VOL. 7, NO. 12 DECEMBER 1975

## THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
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OFFICIAL BUSINESS

- 8
- Jan. 26-30 Seminar for Pre-Trial Officers, Washington, DC
- Jan. 26-30 Seminar for Pre-Trial Service Officers, Washington, DC
- Jan. 26 Judicial Conference Magistrates Committee, Orlando, FL
- Jan. 27-29 Judicial Conference Review Committee, Tucson, AZ
- Jan. 28-29 Judicial Conference Advisory Committee on Judicial Activities, Tucson, AZ
- Jan. 27-29 Judicial Conference Review Committee, Tucson, AZ
- Jan. 28-29 Judicial Conference Judicial Activities Committee, Tucson, AZ
- Jan. 30 Joint Committee on Judicial Code, Tucson, AZ
- Jan. 29-30 Judicial Conference Criminal Justice Act Committee, Coronado, CA
- Feb. 2-3 Judicial Conference Court Administration Committee, Tucson, AZ
- Feb. 2-6 Seminar for Asst. Federal Public Defenders, San Diego, CA
- Feb. 6-7 Judicial Conference Advisory Committee on Appellate Rules, Tucson, AZ
- Feb. 12-13 Workshop for District Judges (3rd, 4th & DC Circuits), Philadelphia, PA

Librarian, College Of Law  
Univ. Of Illinois  
Champaign, Ill 61820

# PERSONNEL

## Confirmations

John F. Grady, U.S. District Judge, (N.D. Ill.), Nov. 20  
Charles H. Haden, II, U.S. District Judge, (N. & S. D. W. Va.), Nov. 20  
Gerald B. Tjoflat, U.S. Circuit Judge, (5th Cir.), Nov. 20

## Nominations

Patrick E. Higginbotham, U.S. District Judge, (N.D. Texas), Dec. 2  
John Paul Stevens, Associate Justice, Supreme Court of the United States, Dec. 1

## Deaths

Ben C. Connally, U.S. Senior District Judge, (S.D. Texas), Dec. 3  
Joseph Charles McGarraghy, U.S. Senior District Judge, (Dis.-D.C.), Nov. 29  
Robert E. Tehan, U.S. Senior District Judge, (E.D. Wis.), Nov. 27

## NEW COURTHOUSE FOR CA-3

Effective December 15 the U.S. Court of Appeals for the Third Circuit moved to new quarters in the top five floors of the 22-story U.S. Courthouse at 601 Market Street, Philadelphia, Pennsylvania 19106, overlooking historic Independence Mall. The U.S. District Court of the Eastern District of Pennsylvania completed its move to the new quarters last August. The phone listing for the Clerk's Office, (CA-3) is: (215) 597-2995.

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# The Third Branch

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## Bulletin of the Federal Courts

VOL. 8, NO. 1

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

JANUARY 1976

### CHIEF JUSTICE BURGER PRESENTS YEAR-END REPORT ON FEDERAL JUDICIARY

In his year-end report on the condition of the federal judiciary, the Chief Justice called for an increase in the number of federal judges, a reduction in the jurisdiction of federal courts and an increase in judicial salaries.

The Chief Justice reported that "The judicial system by and large, however, is working well, and this is reflected in the relatively high popular esteem of the courts. The faults and frailties of our judicial branch are, for the most part, recognized and correctable—and there is much activity toward improvement."

He made these points to illustrate the increasing burden on the federal courts:

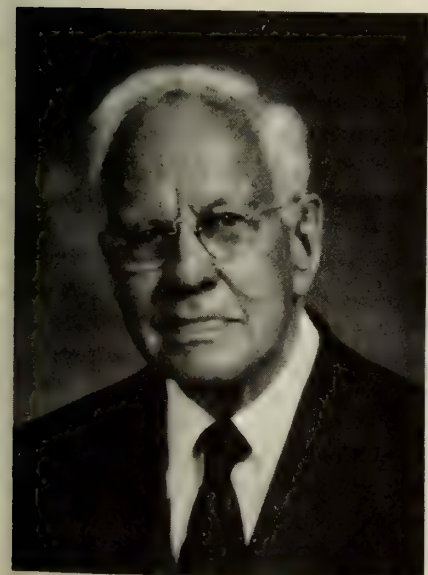
In fiscal year 1975, 160,602 new cases were filed in the United

States District Courts, making an average of 402 cases per judgeship, an unrealistic number for one judge while in 1970, (See REPORT page 2)

### JUDGE FRIENDLY LECTURES ON CONSTITUTION



(For story on Judge Friendly's lecture, see page 3.)



### HENRY P. CHANDLER, FIRST A.O. DIRECTOR, DIES AT 95

The first Director of the Administrative Office of U.S. Courts, Henry P. Chandler, 95, died December 12 in Bethesda, Maryland.

An honors graduate of Harvard in 1901, he joined the faculty of the University of Chicago where he taught English and also served as Secretary to the President of the University. After graduating from the University's law School in 1906, he entered private practice in Chicago and remained with the same firm until the late Chief Justice Charles Evans Hughes selected him to become the first

Director of the A.O. He served under four Chief Justices until his 1956 retirement.

The current Director of the A.O., Rowland F. Kirks, said, "Henry P. Chandler was one of the finest men to serve the federal judicial system. As the first Director of the Administrative Office, he served as a model for his successors."

While in Chicago, Mr. Chandler was President of the Chicago Bar Association, 1938-1939, and participated in a host of community projects. He took a special interest (See CHANDLER page 2)

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(REPORT from page 1)

the comparable figure was only 317 cases per judgeship.

- Based on preliminary data, 180,000 filings in the district courts are projected for the 12 months ending next June, and this will constitute about 450 cases per judgeship, an increase of 42% since 1970. (No additional judgeships have been provided since 1970.)
- The average disposition per judgeship in 1975 was 371 cases, up 27% from 292 in 1970. Nevertheless, the rising tide of new filings outdistanced the increased output, so that 355 cases per judgeship awaited disposition in 1975, compared to 285 in 1970.
- Congress last increased appellate judgeships in 1968, when about 282 appeals per judgeship were filed; in 1975, the figure was 515. Projections suggest about 19,400 appellate filings this year, or 600 per judgeship, a phenomenal 113% increase since 1968.
- In 1972, in compliance with an act of Congress, the federal courts presented detailed statistics elaborating on the figures recited above along with projections for 1972-1976 anticipated filings. Those figures showed a need for 52 additional judgeships and 13 additional courts of appeals judgeships to meet the swiftly growing burdens.
- However, no judgeships have been created. The same act of Congress that required submission of these figures four years ago on needs of the courts now requires that we submit, in 1976, the figures to measure the needs for 1976-1980.
- Some areas of litigation present an especially dramatic picture: bankruptcies rose 34.3% in fiscal 1975, leaving 262,283 such cases awaiting decision as the year ended.
- *Supreme Court.* Month after month the Justices of the Court face a caseload almost four times as much as that which confronted the Court in the 1920's and 1930's.

- *Diversity Jurisdiction.* Nearly one-fifth of the District Court cases are in these courts because the litigants happen to be residents of different states. Congress should act to eliminate this access to the federal courts.

The Chief Justice then pointed out some encouraging factors:

- *Computerization.* Experiments being conducted by the Federal Judicial Center demonstrate that an appropriate use of computers may be helpful to the courts in meeting the requirements of the 1974 Speedy Trial Act and perhaps in many other ways, including the transcribing of court reports, the monitoring of dockets, and avoiding conflicts in the schedules of attorneys.
- *United States Magistrates.* In fiscal 1975 the magistrates disposed of 255,061 matters that otherwise would have rested with federal judges. This was a one-year rise of 5%.
- *Three-Judge District Courts.* The previous Congress has modified the statutes relating to these courts, reducing their availability and the consequent right of direct appeal to the Supreme Court. However, the law still permits use of three-judge District Courts for cases that could better be tried by a single judge, subject to review by the courts of appeals. The Senate has passed remedial legislation and the bill now awaits House action.
- *Prisoner Petitions.* Fully a sixth of the 117,000 cases of the civil docket of federal courts (19,000) are petitions from prisoners, most of which could be handled effectively and fairly within the prison systems. Federal judges should not be dealing with prisoner complaints which, although important to a prisoner, are so minor that any well-run institution should be able to resolve them fairly without resort to federal judges. Possibly due to internal Bureau of Prisons procedures developed by Director Norman Carlson,

federal prison petitions have decreased 1.2% in the federal prisons. Prisoner petitions from state prisons, however, increased 6.2%

- *State Courts.* The state courts, which have been without a strong, central spokesman and supporter, now have the National Center for State Courts to study their common problems and chart improvements. In its fifth year, it is still supported primarily by private and federal funding, and soon the states must assume this as their proper obligation.

Turning to the problem of judicial salaries, he said, "The gross inequity toward salaries of federal judges, common with 12,000 other high-level federal officials, continues, relieved only by the 5% increase last year in 1975. . . . As we try to look forward into what another century will bring, we can be optimistic about the prospects of justice in this country provided we relate the burden placed on the courts to the capacity to perform and provide the necessary tools and personnel."

(The full text of the Report is available from the FJC Information Service.)

(CHANDLER from page 1)

in juvenile delinquency and protection and was appointed Chairman of the Illinois Committee on Child Welfare Legislation and served that position for four years working to codify Illinois' laws affecting children.

As the first A.O. Director, Chandler helped to organize many facets of the growing federal court system to make them more responsive to the needs of the nation but conversely, to make the Administration



trative Office more responsive to the needs of the courts. He was instrumental in transferring the federal probation system from the Department of Justice to the Administrative Office in 1940.

In his capacity as Director of the A.O., Mr. Chandler earned the affection and respect of judges throughout the nation. In 1959, Senior Judge Learned Hand (CA-2) wrote him:

"In many years of official life I have never met anyone who prevented his personal interests so completely from entering into what he did. Not only that, but you were always alert to see that what was needed was at hand, and there was a pervasive feeling of intelligent compromise without the least show of pedantry that in my personal experience has been unique."

Following his 1956 retirement, Mr. Chandler was invited to Hawaii to study its court system; in 1959 he helped to organize the administrative court system in Illinois and, in 1963, he published his definitive 10-page work on the federal courts: "Some Major Advances in the Federal Judiciary System (1922-1947)."

## JUDGE FRIENDLY LECTURES ON CONSTITUTION

In remarks prepared for delivery January 29, Judge Henry J. Friendly (CA-2) presented a Bicentennial address on the Constitution. The address is the first of a series being presented by prominent judges, legal scholars and government officials under the auspices of the Department of Justice.

Here are the highlights of Judge Friendly's address. (A full text is available from the FJC Information Service.)

• If it had not been for the Constitution there is little doubt that the nation would have broken up shortly into two or three small groups of states. Moreover, even under the Constitution, major efforts were required to prevent the country from quickly becoming fatally embroiled in the wars of the French Revolution.

• The Constitution has acquired

a mystique that no other instrument in all history has possessed—"... the heaviest shell that can be fired in debate is a claim that a proposed action runs counter to the spirit of the Constitution."

• Despite disclaimers during the debates on ratification, the framers of the Constitution believed it came as close to perfection as any political document could. The success resulted from five factors. Three were a sense of urgency on the part of the framers; the relatively small number of delegates and the fact that they knew each other well; and, lastly, the remarkable ability of the men of the Convention.

• The "translation of these three favorable factors into a triumph" was due to two interacting factors: the willingness of the framers to compromise and the ability of the delegates to meet privately and work out the necessary compromises without the glare of publicity.

• The Constitution has been successful because the framers used general language which could be equally applied to a tiny new nation of only 4 million people as well as to a diverse, complex nation of over 200 million.

• The abilities of the framers are evidenced in the fact that despite the growth of the nation, the Constitution has only been amended sixteen times since the initial addition of the first ten amendments. However, primarily through the Fourteenth Amendment, the states lost a considerable portion of their original sovereignty. "The men who insisted that a national government emerge from the deliberations at Philadelphia might be surprised to find how national in this respect it has become. It is ironical that their one great though excusable failure should have led to an increase in the power of the national government beyond anything most of them would have wished."

Judge Friendly pointed out that the Constitution was "the creature of statesmanlike compromise" and asked, "Have we lost this art within the Legislative Branch? Have we lost it in the relations among the Branches? There are some danger signs."

As one of these signs, he singled out the failure of the Congress to agree upon a national energy policy. Another danger sign, he said, was the confrontation between the President and the Congress over the right of the President to involve the nation in foreign wars without the knowledge or consent of Congress. "Perhaps the most dramatic illustration how excessive assertion engenders excessive response has been with respect to what has come to be called executive privilege."

Another instance of this inability of the Congress and the President to work out their differences in statesmanlike compromise concerns the powers to spend or not to spend.

However, Judge Friendly did not spare The Third Branch, the federal judiciary. Many believe this branch has become "very dangerous indeed—dangerous because it has forgotten the perception of Mr. Justice Stone that 'Courts are not the only agency of government that must be assumed to have the capacity to govern.'"

As an example, Judge Friendly pointed to the extended dicta in the opinion of the Supreme Court in *Miranda v. Arizona* which precipitated a storm in Congress and seemed to carry the most serious threat to the Court's position since the attempt by President Roosevelt to pack the Supreme Court in 1937.

Judge Friendly concluded his remarks by saying, "The demands the Constitution makes on us are modest but insistent. It asks only that we treat it in the spirit in which the framers created it—a spirit of moderation, of compromise, and of placing the public good above private ends. This Bicentennial year calls on us to rededicate ourselves to that spirit."

## JUSTICE CLARK TO LECTURE AT WILLIAM AND MARY

Justice Tom C. Clark (Supreme Court of the U.S., ret.) plans to lecture during the coming semester at the Marshall Wythe School of Law at the College of William and Mary in Williamsburg, Virginia.



## FJC STARTS LIBRARY STUDY



Raymond M. Taylor

At the direction of the Judicial Conference of the United States, the Center has commenced a study of the library services for the federal courts, central and in-chambers libraries, both Circuit and District.

The study will address itself to the growing needs of the federal judges, the magistrates, the bankruptcy judges and federal public defenders in a system that has grown far beyond established procedures set up years ago. The vast geographical areas covered by some of the libraries in the system have rendered impractical one central library and many of the district judges, traveling out of their headquarters to hold court, often must take part of their library with them.

Additional facets of the study call for an examination of tried and proven methods and materials for law research adopted in the past, with a view to determining whether better methods and materials are now available and whether it would be feasible to change. This means an examination of all modern technology such as computerized research, various types of microform, and transmittal of law information quickly and efficiently. The study necessarily will take into consideration space available in existing courthouses as well as what would ideally be available in the courthouses of the future.

Raymond M. Taylor, who has for the past ten years been the Librarian of the Supreme Court of North Carolina, is taking leave from his position for a year to devote full time to this study. Mr. Taylor has

broad experience in the legal profession, both as a practitioner, a librarian, and a lecturer. In the field of library science, he has written extensively on such subjects as standard library procedures and guidelines for law book publishers. In 1970 he personally conducted the North Carolina Law Research Facilities study, a project which surveyed all court libraries in the state. The 37-volume report on this study is a definitive analysis of all research facilities on hand, as well as recommendations for improved facilities and materials.

While Mr. Taylor will work on the study as Project Director, the Center staff will be assisting his endeavors. FJC Director Hoffman has constituted an Advisory Committee to follow the progress of the project and to render advice on the study as the work progresses. Appointed to the committee are federal judges, a federal librarian, a Circuit Executive, and a select few who represent private practice and law school libraries.

The final report and recommendations are expected to be submitted to Director Hoffman by the end of 1976 or early 1977.

## STATE-FEDERAL

The Federal Judicial Center endeavors to keep abreast of all activities of the State-Federal Judicial Councils. It would assist Center personnel in responding to requests for information on Council work if reports could be received on meetings, subjects discussed and how the Councils function.

The following is a report on some Council activities received since the last column was published in *The Third Branch*.

**Alabama.** A council meeting was held in conjunction with the annual meeting of the Alabama Bar Association last July with Chief Justice Howell T. Heflin and Judge Walter P. Gewin (CA-5) presiding as Co-chairmen. Subjects on the agenda were: report of accomplishments of a local state-federal judicial council in Birmingham; new Alabama Rules of Appellate Procedure which pro-

vide for federal courts to certify questions to the Supreme Court of Alabama; mutual exchange of presentence and probation reports; and a statement from Judge Gewin on the merits of state-federal cooperation.

**Pennsylvania.** This Council, one of the first to organize after they were suggested by Chief Justice Burger in 1970, has functioned effectively since that date. The members make contact each month either at a stipulated meeting place or by telephone to discuss matters of mutual interest and concern. "Dutch treat" dinner is held once a month in the Western District of Pennsylvania, Judge Ruggero Aldisert (CA-3) reports, during which they concentrate on one area of concern or one subject.

These have included collation and review of sentences, prisoner civil rights petitions and conflict of counsel. The conflict of counsel matter became such an acute problem for both the state and federal courts, particularly in the metropolitan cities, that a special committee was constituted to discuss and resolve the matter. Later at a Federal Judicial Center conference for judges of the U.S. Court of Appeals, Judge Aldisert, Conference Chairman, included discussion on this subject in one of his main presentations.

Though not a Council activity, a beneficial offshoot from the Pennsylvania discussions has been the course in state-federal relations for the conferences for state and federal appellate judges held each summer at New York University. Both Mr. Justice Blackmun (S.Ct. of U.S.) and Judge Aldisert participate in these presentations.

**Virginia.** A meeting of this Council was called last June, with 12 regular members in attendance as well as eight visitors, including Justice Powell. Among other things discussed were juror service coordination from both state and federal courts, exchange of information on attorney disciplinary actions, court security, and aspects of the state federal child support program. Another meeting of the Council was held at Williamsburg on January



Kentucky. Judge Pierce Lively (CA-6) has offered the use of any federal courtrooms available to the judges of Kentucky's new Court of Appeals until permanent facilities can be acquired by Chief Justice Scott Reed.



Deputy Chief Probation Officer James R. Pace, above left, congratulating Deputy Chief Probation Officer Herbert Vogt following the ceremony during which Mr. Vogt received the Richard F. Doyle Award.

### D.C. PROBATION OFFICER RECEIVES NATIONAL RECOGNITION

In an impressive ceremony last month, Deputy Chief Probation Officer Herbert Vogt (Dist. D.C.) received the Richard F. Doyle Award for 1975, the only award of this kind given yearly since 1963 by the Federal Probation Officers Association.

The presentation, which was made during a ceremony presided over by Chief Judge William B. Jones (Dist. D.C.), honored Probation Officer Vogt as the nation's premier federal probation officer who, through his own initiative, made an outstanding and significant contribution to the field of corrections. Deputy Chief Probation Officer James R. Pace (Dist. D.C.) said the award stemmed "directly from Herb's early pioneering which, in turn, led directly to our probation office's broad-based group counseling program and, more recently, our court volunteer program for working with probation and parole cases."

### BILLS INTRODUCED TO CREATE NATIONAL COURT AND REVISE FEDERAL APPELLATE COURT PROCEDURES

At the close of the first session of the 94th Congress last month, companion bills were introduced in both the House and Senate which would create a National Court of Appeals and provide for changes in the internal operating procedures of the federal courts of appeals.

The bill to create a National Court of Appeals (S.2762, H.R.11218) and the bill calling for internal revision of the federal courts of appeals (S.2763, H.R. 11219) introduced by Senator Roman L. Hruska and Representative Charles E. Wiggins respectively, are legislative extensions of some of the recommendations of the Commission on Revision of the Federal Court Appellate System which issued its final report last June. (See *The Third Branch*, June 1975, p. 1.)

The National Court of Appeals bill calls for a seven-member court with its seat in Washington, D.C. The Court would receive its cases either by reference from the Supreme Court or by transfer from any U.S. Court of Appeals, the Court of Claims and the Court of Customs and Patent Appeals. In both instances the decision to review would be within the discretion of the new Court, unless directed by the Supreme Court to decide the case. Though the Supreme Court would still have the right to review opinions of the National Court, there would be no appeal or review of an order granting or denying a transfer to the new Court.

Members of the new court would be appointed by the President with the advice and consent of the Senate.

The second bill has five major provisions:

- *Chief Judge; Precedence of Judges.* A Circuit judge shall not be eligible to serve as the chief judge of the circuit for more than seven years.

- *En Banc Hearings.* Cases shall be heard by not more than three (See BILLS page 6)

### STAFF POSITION OPEN AT CA-4

The United States Court of Appeals for the Fourth Circuit is seeking applicants for the newly created position of Senior Staff Counsel. The position calls for the counsel to direct the activities of the Court's six staff law clerks and to perform a principal role in the ongoing analysis and management of the Court's cases. The starting salary is up to \$31,500 with usual federal benefits.

Applicants should submit written inquiries and resumes by March 1, 1976 to: Senior Staff Counsel Committee, U.S. Court of Appeals for the Fourth Circuit, Federal Courts Building, Richmond, Virginia 23219.

### CONGRESS CONSIDERING BILLS REVISING THE BANKRUPTCY ACT

Two bills are now pending in the 94th Congress which, if enacted, would extensively revise both the substantive law of bankruptcy and the structure of the system.

The present Bankruptcy Act, enacted in 1898, has undergone over one hundred piecemeal revisions. The last major revisions were made in 1938 with passage of the Chandler Act, which established relief Chapters as alternatives to bankruptcy for both business and private individuals, and the Referees' Salary Act of 1946, which changed referees in bankruptcy from a fee system of compensation to a salary system.

The first bill, the so-called "Commission Bill," H.R. 31, S. 236, stems from a study made by a nine-member Congressional commission.

The second bill, H.R. 32, S. 235, was drafted by the National Conference of Bankruptcy Judges. It is popularly called the "Judges Bill." The Senate Subcommittee on Improvements in Judicial Machinery has completed hearings on both bills. The House Subcommittee on Civil and Constitutional Rights has held hearings which will continue (See BANKRUPTCY page 7)



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

(BILLS from page 5)

judges unless a hearing or rehearing before the court en banc is ordered by a majority of the active circuit judges of the circuit. However, a court en banc shall consist of the chief judge of the circuit and not more than eight additional active circuit judges.

- **Retirement of Judges.** This provision allows any justice or judge to retire at age sixty if he has served for ten years or if the number of his years of service when added to his age equals eighty, but retirement is not compulsory.

- **Central Staff For Courts.** This allows a court of appeals to appoint necessary legal assistants to positions authorized by the Judicial Conference of the United States. Among the duties which they may be assigned are those involving the preliminary processing of matters filed with the court, research, preparation of memorandums, and the management and monitoring of appeals to assist in their expeditious disposition.

- **Availability of Courts of Appeals Documents.** One copy of the decision, briefs, and related documents filed in connection with each case in the Courts of Appeals the Court of Claims, and the Court of Customs and Patent Appeals shall be deposited in the Library of Congress and the Librarian of Congress shall make copies of such materials available to the public at cost.

[Note: This article is only a summary of the two bills. For complete copies contact the FJC Information Service.]

## The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts

### NEW PUBLIC LAWS

**Farm Credit Associations.** H.R. 7862, to amend the Farm Credit Act of 1971 relating to credit eligibility for cooperatives serving agricultural producers, and to enlarge the access of production credit associations to Federal district courts, was signed by the President on December 31, 1975 (PL 94-184).

**Energy Policy and Conservation Act.** S. 622, which is devised to provide a national energy policy and provide procedures for implementing that policy was signed by the President on December 22, 1975 (PL 94-163). *Inter alia* it extends and expands the jurisdiction of the Temporary Emergency Court of Appeals.

**Civil Service Retirement.** H.R. 4573, to amend Chapter 83 of Title 5 U.S.C., to establish time limitations in applying for civil service retirement benefits, was signed by the President on December 31, 1975. (PL 94-183).

**Technical Amendments to the Federal Rules of Evidence and the Federal Rules of Criminal Procedure.** H.R. 9915 was signed by the President on December 12, 1975 (PL 94-149).

**New York City Financial Problems.** H.R. 10481, to establish a Federal Board to authorize emergency guarantees for the city of New York was signed December 9, 1975 (PL 94-143).

**Older Americans Act.** H.R. 3922, which renews funding authority for the programs for the elderly was sent to the President and signed on November 28, 1975 (PL 94-135). The new legislation will also bar unreasonable discrimination on the basis of age in federally funded programs. The Commission on Civil Rights will conduct an 18-month study to identify such unreasonable discrimination, and following the report of the study, the Secretary of

HEW would promulgate regulations to implement the ban. Under the procedures prescribed, the regulations could not take effect until at least January 1, 1979. The Congress cited as one of the advantages of this system consistent federal regulations on the matter, instead of case-by-case court decisions, to implement the ban on age discrimination.

### CONGRESSIONAL ACTION

**Bankruptcy.** The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights continued hearings on H.R. 31 and H.R. 32 to revise the Bankruptcy Act.

**Bilingual Courts.** S. 565, to provide more effectively for bilingual proceedings in the district courts of the U.S. was the subject of hearings on December 3 and 4, 1974, before the House Judiciary Committee's subcommittee on Civil and Constitutional Rights.

**Attorney's Fees.** The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee held a hearing on H.R. 8219, authorizing the awarding of attorneys' fees in actions for injunctive relief under the Clayton Act. Congressman Crane introduced H.R. 10894, and H.R. 11054 to provide that in civil actions where the U.S. is a plaintiff, the prevailing defendant may recover a reasonable attorney's fee and other reasonable litigation costs.

**Fifth Circuit Revision.** On December 5, 1975, the Senate Judiciary Committee filed its report (S. Rep. No. 94-513) on S. 2752, reorganizing the Fifth Judicial Circuit by creating additional judgeships and dividing the circuit into eastern and western divisions.

### BILLS INTRODUCED

H.R. 11299, to amend Ch. 83 of Title 5 U.S.C., to bar civil service annuity payments during period annuitant is entitled to receive salary as a justice or judge of the U.S. was introduced on December 19, 1975, by Congressman Hendon.



son and referred to the Committee on Post Office and Civil Service.

H.R. 11315, to define; The jurisdiction of the U.S. courts in suits against foreign states; the circumstances in which foreign states are immune from suit and when execution may not be levied on their property. This bill incorporates a proposal of the Department of Justice and was introduced on December 19, 1975; pending in the House Judiciary Committee.

H.R. 11320, to amend Section 376 of Title 28 U.S.C., in order to reform and update the existing program for annuities to survivors of federal justices and judges. The bill which is similar to the Committee print version of S. 12, was introduced on December 19, 1975 by Congressman Thornton and is pending in the House Judiciary Committee.

H.R. 11162, to amend Section 821 of Title 28 U.S.C., to provide for the payment of certain witnesses on the basis of the earned income lost by reason of their appearance as witnesses, was introduced on December 15, 1975 by Congressman Nelstoski and referred to the House Judiciary Committee.

S. 2762, to establish a National Court of Appeals, was introduced on December 10, 1975 by Senator Muska, together with S. 2763, which would improve the appellate court system. Both bills are now pending in the Senate Judiciary Committee. Companion bills, H.R. 1218 and H.R. 11219 were introduced on December 17, 1975 by Congressman Wiggins and were referred to the House Judiciary Committee.

BANKRUPTCY from page 5)

through next March with action expected to be completed by May. The views of the Judicial Conference of the United States are not expected until the alternative proposals have been reduced to a single bill.

The two bills agree on one fundamental change: that the bankruptcy court should be established as a separate court completely independent of a U.S. district court.

This separation was necessary to remove any appearance of impropriety resulting from the appointment of the referee in bankruptcy by the district court, which also hears appeals from the referee's orders. The bankruptcy judge would serve for fifteen years.

The Commission Bill provides for appointment of a bankruptcy judge by the President with the advice and consent of the Senate and for appeals to be heard by the U.S. district judge as is now done. To avoid delay, the Judges Bill proposes appointment by the circuit councils.

Appeals under the Judges Bill would go to the Courts of Appeals. The Judges Bill also provides for a "Fold-in" provision for incumbent referees for six years. During this time the number and location of positions would be determined by the Administrative Office and the positions would be authorized by the Judicial Conference under the Commission Bill and by Congress under the Judges Bill.

A major substantive change would give the bankruptcy court jurisdiction over all controversies relating to the bankrupt or his estate. Under present law, trustees must bring plenary suits to recover assets of the estate in state or federal courts, which may take years to come to trial. These actions would be brought before the bankruptcy judge, and the distinction between plenary and summary jurisdiction of the court would be eliminated.

Both bills in different ways and to different degrees modify existing law as to what constitutes preferential payment by a bankrupt to a creditor which may be recovered by the estate.

The Commission Bill would, in general, leave the bankruptcy judge with only the contested legal issues arising in a case; all other necessary operations would be performed by an Administrator whose office would be an independent agency within the Executive Branch of the government. The Administrator, who would operate offices throughout the United States, would accept

petitions, assist consumer debtors in preparing the necessary documents for filing, counsel debtors as to forms of relief available, and process the case using a salaried government employee as trustee. All disputes would be filed with the bankruptcy court. The Administrator's representative would collect all assets and payments and deposit funds in a central account. The headquarters office would be charged with investing funds in the account and collecting and publicizing statistical information.

The Judges Bill would establish the Administrator in the Administrative Office of the U.S. Courts as Chief of the Bankruptcy Branch. The Chief would be appointed by the Supreme Court with the status of a Deputy Director of the A.O. A consumer debtor would receive assistance in completing the necessary forms and would then be given the opportunity to consult with a private attorney under a controlled fee system as to whether bankruptcy was the best answer to his financial problems. The petition itself would be filed with the bankruptcy court rather than with the Administrator. The estate would be liquidated by a private trustee chosen from a panel established by the Administrator.

A controversial change proposed by the Commission Bill would consolidate the present Chapter X (the corporation reorganization provisions) with Chapter XI arrangements. The Judges Bill would retain these as separate chapters on the premise that the relief now provided under Chapter XI for the smaller business entity commonly coming under Chapter XI must be separate and apart from the extensive and necessarily slow procedures required to completely reorganize large corporations. Both bills modify existing law in each of these chapters.

Each bill emphasizes the consumer-type case and tends to enhance the debtor's position. Such emphasis is necessary to provide the consumer debtor a fresh start.

(See BANKRUPTCY page 8)



# PERS<sup>ONNEL</sup>

# GO<sup>W</sup>FC calendar

## Appointments

John F. Grady, U.S. District Court,  
N.D. Ill., Jan. 5  
Charles H. Haden II, U.S. District  
Judge, N.&S.D.W.Va., Dec. 19  
Patrick E. Higginbotham, U.S. Dis-  
trict Judge, N.D.Texas, Dec. 12  
Eugene E. Siler, U.S. District Judge,  
E.&W.D.Ky., Dec. 8  
John Paul Stevens, Associate Jus-  
tice, Supreme Court of the United  
States, Dec. 18  
Gerald B. Tjoflat, U.S. Circuit  
Judge, 5th Cir., Dec. 12

## Elevations

Damon J. Keith, Chief Judge, U.S.  
District Court, E.D.Mich., Dec. 14  
Walter T. McGovern, Chief Judge,  
U.S. District Court, W.D.Wash.,  
Dec. 31

## Nomination

George N. Leighton, U.S. District  
Judge, N.D.Ill., Dec. 19

## Deaths

William N. Goodwin, Chief Judge,  
U.S. District Court, E.&W.D.  
Wash., Dec. 31  
Reynier J. Wortendyke, Jr., U.S.  
Senior District Judge, D.N.J.,  
Dec. 26

Feb. 2-3 Judicial Conference Court  
Administration Committee,  
Tucson, AZ

Feb. 2-6 Seminar for Asst. Fed-  
eral Public Defenders, San  
Diego, CA

Feb. 5-7 Judicial Conference Crimi-  
nal Law Committee, Phoenix,  
AZ

Feb. 6-7 Judicial Conference Ad-  
visory Committee on Appel-  
late Rules, Tucson, AZ

Feb. 12-13 Workshop for District  
Judges (3rd, 4th & D.C. Cir-  
cuits), Philadelphia, PA

Feb. 26 Judicial Conference Bank-  
ruptcy Committee, Washing-  
ton, D.C.

Mar. 4-5 Judicial Conference Bud-  
get Committee, Washington,  
D.C.

Apr. 7 Judicial Conference of the  
United States, St. Paul, MN

(BANKRUPTCY from page 7)

Discharge will totally extinguish the  
debt.

Neither bill would permit discrim-  
inatory treatment against any per-  
son because he had been dis-  
charged in bankruptcy. Both bills

also permit a consumer debtor to  
redeem secured property that  
would not otherwise be part of the  
estate by paying the secured  
creditor the amount of the debt or  
the fair value of the security, which-  
ever is the lesser of the two. Both  
bills provide government assistance  
to debtors in filling out the neces-  
sary documents for filing the case.

A major change is made in the  
treatment of exemptions. The Act  
now provides that the debtors may  
retain those assets declared by the  
law of each state to be exempt from  
execution. These vary greatly from  
state to state, resulting in non-  
uniform application of the law. The  
Commission Bill establishes spe-  
cific exemptions to be applied in all  
bankruptcy cases, while the Judge  
Bill establishes a minimum or floor  
exemption and state law is followed  
above the minimum.

Both bills separate the admini-  
strative functions necessary to the  
liquidation and processing of es-  
tates from the judicial functions.  
Bankruptcy judges to avoid the  
appearance of favoritism when the  
referee must decide an issue be-  
tween appointed trustees and a  
party in interest. This also would  
prevent bankruptcy judges from  
obtaining information about the  
bankrupt in non-litigation aspects  
of the case which could prejudice  
his decision at a subsequent trial.  
A controversy arising in the case

THE THIRD BRANCH

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Bulletin of the Federal Courts

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FEBRUARY 1976

## POUND REVISITED CONFERENCE TO LOOK AT YEAR 2000

A national conference marking the 70th anniversary of the landmark speech of Dean Roscoe Pound on "The Causes of Popular Dissatisfaction with the Administration of Justice" will be held in Saint Paul, Minnesota, April 7-9.

ABA President Lawrence E. Walsh, Chief Justice House of Connecticut, chairman of the Conference of Chief Justices, and Chief Justice Burger have carried on extensive discussions for months to design a program that will study and seek answers to questions about our judicial process. Among the questions facing the legal community are:

Whether there are better ways to bring about the delivery of justice; whether the results of litigation are coming about in the most expeditious manner possible; whether the most equitable results are achieved; and whether we are keeping abreast of procedural changes, while at the same time looking at social trends which may generate a different type of litigation, and a concomitant change in judicial procedures—in the year 2000 and beyond.

Chief Justice Burger, in remarks prepared for delivery at the midyear meeting of the ABA this month (but delivered by President Walsh because The Chief Justice was confined with "flu") explained that the conference will not be the additional type of conference planned to consider and remedy specific problems; rather it will be designed to look well into the future, to see where we ought to go, and to develop a road map to show us how

to get there."

Attending the conference will be more than 250 national figures who have long been associated with leadership in the areas of judicial improvements. In addition to the 50 State Chief Justices, all members of the Judicial Conference of the U.S. and the Board of Governors of the ABA, such organizations as the National Center for State Courts, the Institute of Judicial Administration and the Institute for Court Management will hold companion meetings to afford observation and participation.

Chief Justice Burger, in concluding his reference to the conference, added: "It would be a mistake to create great expectations about this conference that cannot be fulfilled in the short term. But we are determined that the monumental dimensions of the task and the improbability of immediate results should not keep us from undertaking the inquiry."

## SENTENCING LEGISLATION INTRODUCED

Two bills of major significance introduced by Senator Kennedy would materially affect the sentencing duties and responsibilities of federal judges.

S. 2698 is a bill to impose mandatory minimum terms with respect to certain crimes. This bill, introduced with the co-sponsorship of Senators Fong and McClellan, would among other features, require the imposition of a mandatory minimum sentence of two years for certain offenses (burglary at night, aggravated assault, second degree murder, use of dangerous weapons, rape, certain robbery offenses, and certain heroin trafficking offenses) and a mandatory minimum sentence of four years for repeat offenders of the above-stated crimes. It goes on to provide that before imposition of the mandatory sentence the court shall grant the defendant a full hearing with right of counsel, compulsory process and cross-examination of witnesses to determine if:

- The offender was less than 18 years of age at the time of the offense;
- The offender's mental capacity was significantly impaired;
- The offender was acting under unusual and substantial duress;
- The offender was an accomplice.
- With respect to robbery offenses, bodily injury was inflicted on the victim.

And if any of the foregoing  
(See SENTENCING page 2)



(SENTENCING from page 1)

factors are found to exist the bill provides that "no mandatory minimum shall be imposed." Otherwise the mandatory minimum sentence shall be imposed. Additionally, the court must submit its findings in writing, including an identification of the facts relied upon in making its determination. The imposition or execution of any mandatory minimum sentence could not be suspended, probation could not be granted nor would the usual provisions for "good time allowances," parole, or the Youth Corrections Act be applicable.

S. 2699 would create in the Judicial Branch a United States Commission on Sentencing (five members appointed by the United States Judicial Conference) which would within a three-year period establish specific guidelines for sentencing to which the district judge would conform their sentences.

It would also establish a mechanism for appellate review of sentences on the motion either of the defendant or prosecution. Sentence review would determine whether the sentence is within the guidelines, whether it is reasonable, giving effect to certain enumerated factors. A court of appeals may lower the sentence where the defendant is the petitioner for review, or increase the sentence when the Government petitions for review.

A counterpart bill was introduced in the House by Chairman Rodino on February 3rd as H.R. 11655. At that time the Congressman explained that the bill, introduced earlier by Senator Kennedy "was developed initially under the auspices of the Yale University Law School's Guggenheim program in criminal justice."

Apropos the same subject, in a February 2nd speech to the Governor's Conference in Milwaukee, Attorney General Edward H. Levi noted that,

**"The President has proposed a system of mandatory minimum sentences for various sorts of**

**particularly serious crime. Mandatory minimums would apply to extraordinarily heinous crimes such as aircraft hijacking, to all offenses committed with a dangerous weapon, and to offenses involving the risk of personal injury to others when those offenses are committed by repeat offenders. The President's mandatory minimum sentence proposal also includes provisions to ensure fairness by allowing a judge to find, in certain narrow categories of circumstances, that an offender need not go to prison even though he has been convicted of a crime normally carrying a mandatory minimum sentence. A mandatory minimum sentence must not be imposed if the offender was less than 18 years old when the offense was committed, or was acting under substantial duress, or was impli-**

**cated in a crime actually committed by others and participated in the crime only in a very minor way. Under proposals now before Congress, the trial judge's sentencing decision would be reviewable by appellate courts."**

He further added,

**"It may be time to consider an even more sweeping restructuring of the sentencing system which United States District Court Judge Marvin E. Frankel calls the most critical part of the criminal justice system. There have been proposals to abolish the federal parole system as now exists and to allow trial judges to determine the precise sentence an offender would be required to serve. The trial judge would operate within a set of sentencing guidelines fashioned by a permanent Federal Sentencing Commission."**

#### **FEDERAL CRIMINAL CODE MAY MOVE IN SENATE**

In the Senate, the bill is pending in the full Senate Judiciary Committee. Senator Mansfield has just written to Senators McClellan, Hruska, Hart and Kennedy requesting that they report the bill out without the controversial provision. Specifically, he suggested neutralizing 13 specific areas of the bill. Their memorandum, printed in the February 16th *Congressional Record*, includes the following observations:

"The controversial sections of S. 1 would not be included in the new bill to revise and reform the criminal laws. They would be deleted, thereby retaining present law in status quo. In sum, the new bill would contain most of what is now contained in S. 1 except the following features:

- Sec. 521 (Mistake of Fact).
- Sec. 522 (Insanity).
- Sec. 541 (Exercise of Public Authority).
- Sec. 542 (Protection of Persons).
- Sec. 543 (Protection of Property).

Sec. 551 (Unlawful Entrapment).

Sec. 552 (Official Misstatement of Law).

Sec. 1101 (Treason)

Sec. 1121-1128 (Espionage and Related Offenses; Official Secrets).

Sec. 1842 (Obscene material)

Sec. 2001-2403 (These provisions on Sentencing should be shaped up).

Sec. 3101-3109 (Wiretapping).

Sec. 2401-2403 (Death Sentence)."

At the moment, there is no information available as to the effect of Mansfield's proposal on the future of the bill. However, the staff has been working and continuing to work on just this kind of solution.

In the House of Representatives the Subcommittee on Criminal Justice of the House Judiciary Committee does not anticipate hearings on S. 1 or its counterpart bills (H.R. 333 and H.R. 10850) until the Senate has acted.

S. 1 as presently drafted continues to make provision for appellate review of sentencing in Section



25 which was previously opposed. Judicial Conference spokesmen at hearings on the bill. Certain commendations for allowing sentence review on less than a full record where only portions of the record are designated, were adopted. The present version of S. 1 omits inclusion such features of the present criminal code as the Youth Offender Act, the Young Adult Offender Act, the Narcotics Addicts Rehabilitation Act, and indeterminate sentencing and other features of present 18 U.S.C. §4208.

Of critical importance should the present version of S. 1 be passed, is the fact that the present version of S. 1 would, under Section 1204, become effective a year after its enactment. Obviously, patterned by instructions necessary for the implementation of this major redefinition of all criminal law might take a period far longer than could be provided under the terms of the Act. Noting this feature, as well as other portions of the legislation, the Judicial Conference, at its September 1975 session made the following recommendations:

#### **Federal Criminal Code**

The views expressed on S.1, as previously reported, reflected opposition to this legislation on the ground that it contemplates unnecessarily sweeping redefinition of federal crimes and will require among other things, (a) that every district judge will be required to structure and formulate new jury instructions to replace those which have evolved on a literal "trial and error" basis for well over 100 years; (b) that new instructions for newly defined crimes must then literally be in the gauntlet" of courts of appeals; and (c) that ultimately the Supreme Court will be obliged to review numerous cases to pass judgment on the adequacy of the instructions required by the new code. In the present state of overcrowded dockets at every level, new and complex burdens that S. 1 will impose on the federal courts are incalculable. The Conference nevertheless continues to comply with congressional requests for comments on specific parts on S. 1.

The committee report to the Conference stated that culpability is central to the entire legislative scheme of the proposed new code. The committee reported on the position that the Judicial Conference took at its April 1973 meeting on this subject (Conf. Rept. p. 15) but suggested a minor modification of the definition of "knowingly." The committee recommended and the Conference approved that the following definitions of "culpability" to be proposed to the Congress:

**A person engages in conduct:**

(1) "knowingly" if, when he engages in the conduct, he does so voluntarily and not by mistake, accident or other innocent reason, and with knowledge of existing circumstances to the extent that such knowledge is an element of the offense;

(2) "intentionally" if, when he engages in the conduct, he does so knowingly and with the purpose of doing that which the law prohibits or failing to do that which the law requires;

(3) "recklessly" if, when he engages in conduct with respect to a material element of an offense, he disregards a risk of which he is aware that the material element exists or will result from his conduct. His disregard of that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation; except that awareness of the risk is not required where its absence is due to voluntary intoxication;

(4) "negligently" if, when he engages in conduct with respect to a material element of an offense, he fails to be aware of a risk that the material element exists or will result from his conduct. His failure to perceive that risk must involve a gross deviation from the standard of care that a reasonable person would observe in the situation.

In considering the provisions of S. 1 the Conference agreed that Judge Zirpoli, as chairman of the Committee on the Administration of the Criminal Law, should coordinate all of the activities of the several

committees of the Judicial Conference relating to the proposed new criminal code and should appear before the Congress whenever requested in connection with the view of the Conference relating to S. 1.

The Committee on the Administration of the Criminal Law held a further meeting on February 4-7, 1976, at Phoenix, Arizona, to further consider S. 1 as well as the Speedy Trial Act. In addition to the regular membership of the Committee, spokesmen for the Committee on the Administration of the Probation System and the Federal Magistrates System and of the Advisory Committee on Criminal Rules of Procedure attended the meeting to give the Committee the benefits of their views on those aspects of S. 1 which are relevant to the work of the other committees. A further report will be forthcoming from the Committee on the Administration of the Criminal Law to reflect such views as well as additional views of the Committee.

#### **ABA HOUSE OF DELEGATES TAKES STAND ON FEDERAL ISSUES**

A number of recommendations affecting the federal judiciary were acted upon by the ABA House of Delegates when it held its Midyear Meeting in Philadelphia this month. Some of them were:

• **Bankruptcy** Approved a recommendation of the Section of Corporation, Banking and Business Law to endorse proposed legislation which would change the federal bankruptcy system. Amendments were made on the floor to the original submission and certain aspects of tax issues were deferred.

• **Multidistrict Litigation** Tabled a recommendation from the Antitrust Law Section to amend 1407 U.S.C. 28, to permit the Patent Law Section to study the recommendations. The matter will be resubmitted at 1976 Annual Meeting. The recommendation as now drafted would apply Section 1407 to trial procedures as well as pretrial procedures; would give the Multidistrict Panel greater

(See ABA page 4)



(ABA from page 4)  
supervisory powers over transferee judges; would give Multidistrict Panel greater powers to deal with questions involving changes of venue at the conclusion of pretrial proceedings.

•**Patent, Trademark and Copyright Law** Approved "in principle" recommendation for legislation providing for the re-examination by the United States Patent and Trademark Office of any United States Patent at any time during its term when requested by any member of the public, under certain conditions. Also approved a resolution that the ABA opposes modification of the principles of national treatment and the right of priority presently contained in the Paris Convention for the Protection of Industrial Property.

•**Guides for Lawbook Publishers** Approved a recommendation encouraging voluntary compliance with Guides for the Law Book Industry promulgated by the Federal Trade Commission last August.

•**Lawyers in Federal Government** Approved a resolution permitting government lawyers, who are non-resident members of bar associations which require continuing legal education, to meet such requirements through accredited courses acceptable to an independent accrediting body.

•**Fees for Attorneys Representing Claimants Before Federal Agencies** Approved a recommendation that Congress enact a statute governing attorneys' compensation for each federal agency when contingent fees are not already provided for by statute.

•**Task Force on Advanced Judicial and Legal Education** Tabled a recommendation on programs for judicial and legal education. It will be resubmitted and considered at the Annual Meeting next August.

•**Internal Revenue Code** Approved a resolution to amend the Internal Revenue Code of 1954 to permit asset-by-asset elective amortization of the cost of certain intangible assets used in the trade or business or for the production of income with respect to which depreciation or


amortization is not otherwise allowable.

•**Federal Law Enforcement Agencies** Approved a resolution supporting "in principle" recommendations contained in a report which followed a study of all federal law enforcement agencies. Offices involved: The Department of Justice including the Office of the Attorney General, the United States Attorneys, the Federal Bureau of Investigation, the White House and the Internal Revenue Service. The report takes up the issue of the appointment of a Special Prosecutor and recommends against a permanent office. The report favors authorizing, through legislation, the appointment of a temporary special prosecutor by the Attorney General or by a special Court of Appointment.

•**Fair Trial—Free Press** Deferred to next August consideration of a recommendation on court procedures to accommodate rights of fair trial and free press including guidelines and procedures for adoption of special orders.

•**Professional Discipline** Approved a resolution opposing passage of S.2723 which would amend 28 U.S.C. to provide for the censure, suspension and disbarment of attorneys in United States district courts by legislative action rather than by judicial rule; also would authorize U.S. attorneys to prosecute disciplinary proceedings.

•**LEAA** Approved a resolution from the Judicial Administration Division presented by Judge Griffin Bell (CA-5) which would assure through legislation a reasonable and adequate percentage of LEAA funds to state courts.

•**National Court of Appeals** Approved a resolution presented by Judge Shirley Hufstедler (CA-9) supporting S.2762, a Bill for the establishment of a National Court of Appeals, but restricted to the referral powers of the Supreme Court. The Judicial Administration Division delegate endorsed the resolution on behalf of the Division Council. 

## LIMITATIONS PLACED ON RECEIPT OF HONORARIUMS

According to the Federal Election Commission, the criminal provisions of the Federal Election Campaign Act Amendments of 1976 (18 U.S.C. §616) apply to all federal judges. Section 616 of Title 18 provides that:

"Whoever, while an elected or appointed officer or employee of any branch of the Federal Government—

(1) accepts any honorarium of more than 1,000 dollars (excluding amounts accepted for actual travel and subsistence expenses) for an appearance speech, or article; or

(2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than \$15,000 in any calendar year; shall be fined not less than \$1,000 nor more than \$5,000."

The Commission issued an "opinion of counsel", dated January 1976, which advised that federal judges are covered by the Act, and which discussed the effect of the Act's coverage of various activities by judges.

Several activities of judges assumed by the Commission to be outside the perimeters of section 616. The Commission carved an important exception from the seemingly all inclusive language i.e., money is accepted in the form of fixed or regular compensation intended as consideration for the rendering of services, rather than payment for a one-shot transaction then the payment is deemed "stipend", not an honorarium.

A speech, appearance, or article prepared in connection with teaching a course at a law school is considered a stipend. Royalties from books or plays are exempt. Also while a speech before a civic group, at a Bar association dinner or at a seminar is, according to the opinion, covered by the limitation of §616, nevertheless the opinion adds, "However, if a bona fide award is made to an officer or employee, the payment will not be treated as an honorarium for purposes of this section".

The Commission viewed most other activities of judges involving



appearance, speech, or article as honorariums subject to the Act's restrictions. Speeches given as a single event, regardless of subject or audience, were deemed to be covered by the limitations of §616. According to the opinion, Section 616 also embraces newspaper or magazine articles, reviews of books or plays, and sale of official papers.

The Commission's counsel chose to defer ruling on whether a retainer for periodic lectures on behalf of a group, organization, or foundation could be a stipend. Noting that such a practice could be used to circumvent the strictures of §616, the Commission leaned toward calling such retainers honorariums, but felt compelled to reserve its opinion until it was faced with a specific factual situation.

The recent Supreme Court decision concerning the Federal Election Campaign Act, *Buckley v. Valeo*, *Secretary of the United States Senate*, 474 U.S. 1 (No. 75-16, January 30, 1976) did not discuss Section 616, but addressed other provisions affecting elected officials.

## ABA TO HOLD CONFERENCE ON FEDERAL JUDGE SELECTION

On March 12-13 ABA President Lawrence E. Walsh will meet with 70 more national figures to discuss whether the process of selecting federal judges, including Supreme Court Justices, can be improved. President Walsh, in announcing the conference, pointed out that during the twenty-year period that the ABA has been involved in the process it has become increasingly apparent that a continuous re-examination must be made to determine, among other things, whether appropriate standards and procedures are being followed.

Invited to Vanderbilt University, the site of the conference, will be representatives from industry, law, the federal judiciary, members of the U.S. Senate and Department of Justice. The list of conferees reflects a feeling that there should be participation in the process by

individuals outside the legal profession itself. In the past, the selection of federal judges has meant involvement of national, local, and state bar associations as well as federal government officials, but harsh criticism of some courts and judges recently would appear to dictate participation from representatives of other disciplines.

Among other things on the conference agenda will be a critical look at the role of the ABA in the selection process, a role often highly controversial.

Ernest C. Friesen of Littleton, Colorado, former Director of the Administrative Office of the United States Courts as well as first Director of the Institute for Court Management, is Conference Director. Mr. Friesen has also served as an Assistant Attorney General at the Department of Justice and in this capacity took an active role in processing nominations of federal judges.

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

**Antitrust.** H.R. 8532, the *Antitrust Parens Patriae Act* was favorably reported by the House Judiciary Committee on September 22, 1975, and a rule was granted on February 10, 1976. The bill is awaiting floor action.

As reported, the bill permits State Attorneys General to recover in federal court, monetary damages on behalf of state residents injured by violations of the antitrust laws. These suits can be converted into class actions under certain circumstances, notification of the members of the class is required and court approval must be obtained for settlements.

In addition (and *inter alia*) the bill amends the Clayton Act to require that plaintiffs who prevail in antitrust injunction cases by awarded reasonable attorney's fees.

**Retirement Pay — Territorial Judges.** The Senate on February 4 passed S. 14, amended, which will provide for cost-of-living increases in the retirement pay of territorial judges under §373 of Title 28. The cost-of-living adjustment will be computed in the same manner as the cost-of-living adjustments under the Civil Service Retirement System, but the amount paid may not exceed 95% of the salary of an active district court judge. Provisions which would have granted the same increases to judges who resign under §371(a) of Title 28, were deleted on recommendation of the Committee.

**Judicial Tenure.** S. 1110, introduced by Senator Nunn, has been the subject of hearings before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. The bill would establish a Council on Judicial Tenure, composed of active judges elected by the Judicial Conference of each circuit or by the court in the case of the representatives of the Court of Claims, Court of Customs and Patent Appeals, and the Customs Court. The function of the Council will be to investigate, including the holding of hearings, and make recommendations to the Judicial Conference, which would sit as a court on the question of a judge's fitness. The Supreme Court would hear appeals in these cases. The American Bar Association and the National Association of Attorneys General have testified.

**Court Leave.** H.R. 11438 passed the House on February 17, 1976. The bill will authorize court leave for a federal employee summoned to appear as a witness in any proceeding to which the United States is a party, rather than only when he is summoned by the United States.

**FTC Amendments of 1975.** The Senate passed (on December 17, 1975) S. 642, which will make the FTC more independent of the executive branch, allow State Attorneys General and aggrieved persons to maintain civil actions in state courts to enforce FTC rules

(See LEGISLATION page 6)



(LEGISLATION from page 5)  
and regulations, and increase the penalties for failure to comply with FTC subpoenas and orders. The bill also provides for citizen petitions to act on rules. If the petition were ignored or denied, the person could obtain court review. Appeals from FTC cease and desist orders could be taken only in the Court of Appeals for the circuit where the person lives or the company maintains its principal place of business. The bill is now pending before the House Commerce and Judiciary Committees.

**S. 2923**, to provide that full-time magistrates receive the same compensation as referees in bankruptcy, passed the Senate on February 5 and is pending in the House Judiciary Committee.

**S. 1283**, to further define the jurisdiction of U.S. magistrates passed the Senate on February 5 and is pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice.

**H.R. 6184**, amending the Bankruptcy Act to fix the salaries of referees in bankruptcy, passed the Senate on February 5. The bill was signed into law (P.L. 94-217) on February 27 and takes effect March 1. It sets salaries for full-time referees at \$37,800, provides for a cost-of-living adjustment and review by the President's salary review commission. Significantly, referees' salaries will now be set administratively rather than by the Judicial Conference of the U.S.

#### **SPEEDY TRIAL ACT REPORTERS MEET**

Reporters for Speedy Trial Act planning groups in the First and Second Circuits met in New York on January 15 to exchange views about the planning process and about possible solutions to common problems in complying with the statute. A second meeting of this group was held on February 26.

Reporters from the Sixth and Seventh Circuits held a similar meeting in Cleveland on January 29 and 30.

#### **CHIEF JUSTICE PRESENTS ANNUAL REPORT ON STATE OF THE JUDICIARY**

In his seventh annual report on the judiciary, The Chief Justice called for additional judgeships, adjustment of judicial salaries, and a reduction in the jurisdiction of federal courts.

The Chief Justice lauded the ABA for supporting several important measures which have served to improve the administration of justice.

In addition, The Chief Justice also made these points:

- The statutes relating to three-judge district courts, with direct appeal as a matter of right to the Supreme Court—by-passing the courts of appeals—have been amended slightly, but the basic problem of allowing certain classes of cases the special privilege of direct appeal to the Supreme Court still remains.

- The Congress has not yet acted on the matter of federal court jurisdiction in diversity of citizenship cases . . . diversity cases have no more place in the federal courts in the second half of the 20th century, and surely not in the final quarter of this century, than overtime parking tickets or speeding on the highways simply because the street or highway is federally financed. One-fourth of the civil cases in the federal district courts are diversity cases. "To shift these cases from 400 federal district judges to more than 4,000 judges in the state courts of general jurisdiction will impose no undue burden on the states."

- The ABA is making encouraging progress on the recommendations of the ABA Committee on Disciplinary Enforcement chaired by Justice Tom Clark . . . [M]uch more must be done with those few in our profession who appear to have forgotten that they are indeed members of a profession. "It is vitally important that the Association's Standing Committee on Professional Discipline pursue its work vigorously and

that state supreme courts and bar associations implement the 1971 recommendations and continue to work to develop uniform rules of disciplinary enforcement."

- As the workload increases both state and federal courts, the capacity of the legal profession to provide qualified courtroom advocates increases accordingly. "The Judicial Conference of the United States has now authorized the appointment of a special committee to develop standards that lawyers must meet to practice in federal courts, as some federal courts already require. That committee will soon begin its important work."

- Congress has failed to not only create new judgeships to fill existing vacancies. In 1972, the Judicial Conference requested additional judgeships. After approximately three years the Judiciary Committee of the Senate recommended 59 new judgeships. The Senate has now approved 7 appellate judgeships and this modest action is awaiting House action. "The remaining much-needed judgeships now await action of both Houses. In the near crisis situation that confronts us, I put it to you whether any political considerations related to the impending Presidential election are tolerable."

The ABA's House of Delegates would perform a significant public service by urging the Congressional leaders and the President to work out an acceptable solution that gets these judges on the bench without more delay. There should also be no delay in promptly filling the 26 vacancies that now exist.

- The delay in providing additional judgepower has prevented Congress from enacting legislation that brings more litigation into the courts. Judicial decisions at every level—including the Supreme Court—have also created new areas of litigation. "[T]he point is that when courts have more work, they must have more judges, more supporting personnel, more equi-



ment. It is the lag in providing for these needs that provides a valid cause for public dissatisfaction . . . ."

- The National Center for State Courts will soon begin construction of its national headquarters in Williamsburg, Virginia. "The next crucial step is for each state bar president to see to it that his state legislature contributes its fair share toward the permanent funding of the Center."

The Chief Justice then turned to the National Conference of judicial, legal and other leaders scheduled for April in St. Paul, Minnesota which is discussed in a separate story in this issue. See page one. Note: These are only excerpts from the Chief Justice's address. The full text is available from the FJC Information Service.



#### UPDATE: COMPUTER ASSISTED LEGAL RESEARCH

The Center's evaluation of Computer Assisted Legal Research systems begun last summer is moving toward completion of the first phase. LEXIS, a full text system, was installed on an experimental basis in the Sixth and Tenth Circuits. Both WEST/LAW, a headnote retrieval system, and LEXIS were installed in the D.C. Circuit.

The purpose of the project is to determine whether and in what ways systems may help lighten the growing federal judicial burden. While the information collected so far indicates that such systems save some time and produce some information not available through manual research, the results also show that the need for such systems in the courts (as distinguished from use by the Bar) is considerably below what was expected by interested judges, the Center and the A.O. at the beginning of the study. Thus, one major objective of the evaluation is to determine the minimum amount which should justifiably be spent on this type of service so that funds which might otherwise be spent for additional terminals could become available for additional law clerks or other supporting staff.

Under the participation agreements with the pilot courts three kinds of data are being collected. The crux of the evaluation is the collection of comparative memoranda prepared by pairs of law clerks. One law clerk researches an actual problem using traditional manual methods and the other uses one of the computer assisted systems. This is the first field test using this evaluation method. Time records on memoranda preparation and judges' ratings of the memoranda for information content are maintained in order to compare the systems on time required and quality of results. A second kind of data covers usage at each terminal. Such data includes both number and uses of the terminals and length of each use as well as reports indicating whether the user found relevant cases using the terminals which were not found through

manual research. Users also report on the purpose of the research as well as their impressions as to the timesavings from such use. A third, and critical set of data being collected is the impressions and opinions about the systems from judges.

Terminals at the three present evaluation sites will be turned over to the A.O. as operational sites in the near future and the project will move on to evaluating the needs of additional sites.

A major focus of the next phase of the evaluation will be how best to provide access to courts whose terminal usage would not justify an onsite terminal. Another focus will be how to raise user proficiency so federal court users (primarily law clerks) can more quickly and efficiently access all of the relevant information available in the systems' electronic libraries.

#### CA-2 ANNUAL REPORT RELEASED

Circuit Executive Robert Lipscher's Annual Report on the Second Circuit was released by Chief Judge Irving R. Kaufman last month.

Chief Judge Kaufman cites major reasons for this detailed accounting of his Circuit. One is the belief that the business of the federal courts is fundamentally the business of the public; and, following this premise, the conviction that the public has a right and obligation to know more about their courts.

On the appellate level, and finally functioning with a full complement of nine judges, the Circuit terminated more appeals than were commenced, a record established four times in the last five years. At the end of fiscal 1975 only 842 appeals remained pending. Eight senior judges assisted these endeavors.

There were 471 criminal appeals disposed of and 1,337 civil and other appeals terminated during the year. This represents less than 1% decrease from last year's statistics.

In the District Courts of the Second Circuit, with 47 authorized judgeships, 43 judges terminated

13,821 cases.

Also receiving attention in the report are the Circuit's plans to comply with the Speedy Trial Act, the installation of their computer software system designed by the FJC (COURTRAN), and the adoption of the civil appeals management plan (CAMP). The CAMP program has been in operation 15 months and is based on the assumption that settlement procedures, conducted by staff counsel, can play an important role; that early pre-argument conferences in many cases can result in settlements and thus save the litigants money and the judges valuable time.

Commenting on the report, Chief Judge Kaufman commended the work of Mr. Lipscher and said he is "deserving of the highest commendation for his ingenuity, enthusiasm and devotion to the business of this circuit."

Commended also were the federal judges of the Second Circuit, who, faced with heavy caseloads, met the challenge and have been "forward-looking, dynamic, diligent and concerned individuals." ■



## SUPREME COURT UPHOLDS MAGISTRATES REVIEW POWERS

The Supreme Court on January 14, in the case of *Mathews v. Weber*,\* unanimously ruled that a U.S. District Court may refer an appeal from a denial of Social Security benefits to a United States magistrate for preliminary review and recommended disposition.

The opinion affirmed a Ninth Circuit holding that the Federal Magistrates Act permits the delegation of this function to a magistrate as an "additional duty" under 28 U.S.C. Sec. 636(b). The Supreme Court opinion stressed that the authority to make the final determination rests with the district judge handling the case, but also emphasized that when Congress created the magistrate position they not only gave them new authority but also specified procedures by which the district courts may assign duties to the magistrates. In the *Weber* case, the U.S. District Court for the Central District of California adopted a local rule which, among other things, authorized the magistrates to make a preliminary review of a closed administrative record. Under existing law a District Court may review and pass upon a decision of the Secretary of HEW, but neither party to the litigation may introduce additional evidence at this stage.

The Court rejected the argument of the government that the reference in this instance did in fact constitute the magistrate a "special master" thereby violating the requirement of Federal Rule of Civil Procedure 53. The Court made it clear that its holding in the *Weber* case was limited to the context of the case before it.

It was also pointed out that the decision in this case did not bear in any manner with the Court's decision in *Wingo v. Wedding* handed down in 1974, since in that case it was their "reading of the habeas corpus statute . . . that formed the basis for the holding."

\*423 U.S. \_\_\_\_ (1976); 503 F2d 1049 (1974)

## DOJ calendar

- Mar. 15-17 Seminar for Fiscal Clerks, Phoenix, Arizona
- Mar. 22-26 Seminar for Pretrial Services Officers, Washington, D.C.
- Mar. 29-Apr. 2 Advanced Seminar for Probation Officers, St. Louis, Missouri
- Apr. 2-3 Workshop for District Judges (1st & 2nd Circuits) New York, New York

- Apr. 5-9 Orientation Course for Probation Officers, Washington, D.C.
- Apr. 6-9 Seminar for District Court Clerks, Phoenix, Arizona
- Apr. 7 Judicial Conference of the United States, St. Paul, Minnesota
- Apr. 7-9 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota

## PERSONNEL

### Elevation

Rhodes Bratcher, Chief Judge, U.S. District Court, W.D.Ky., Jan. 1

### Confirmation

George N. Leighton, U.S. District Judge, N.D. Ill., Feb. 2.

### Deaths

Charles F. McLaughlin, Senior U.S. District Judge, Dist. D.C., Feb. 24, 1976  
Richard W. McLaren, U.S. District Judge, (N.D. Ill.), Feb. 24, 1976  
Wilbur K. Miller, Senior U.S. Circuit Judge, D.C.Cir., Jan. 24

### Resignation

Griffin B. Bell, U.S. Circuit Judge, Fifth Cir., Mar. 1

### THE THIRD BRANCH

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## Bulletin of the Federal Courts

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### PRETRIAL DISTRICTS CHOSEN

The passage of The Speedy Trial Act (Title II, P.L. 93-619) required the implementation of 10 demonstration Pretrial Services Agencies. The selection criteria for the 10 demonstration districts are specified in 18 U.S.C. 3152.

This section provides for the selection of 10 districts based on the following considerations: (1) the number of cases prosecuted annually in the district; (2) the percentage of defendants in the district presently detained prior to trial; (3) the incidence of crime charged against persons released pending trial under this chapter; and (4) the availability of community resources to implement the conditions of release which may be imposed by the court.

The Probation Division of the Administrative Office identified districts which would meet the selection criteria outlined in the Act. The division initially identified the largest districts based on the number of criminal filings and cases pending in fiscal 1974. This ranking procedure produced a natural break of 23 districts, with the most criminal filings. An additional 7 districts were added to the list for a total of 30 based on objective reasoning and numerical considerations.

A questionnaire was sent to each of the 30 districts along with a listing of criminal cases disposed of in each district for

(See PRETRIAL page 2)



The Institute For Court Management Graduation Ceremony was held at the Federal Judicial Center on March 10. Pictured from left to right are Judge Edward Allen Tamm, (CA-D.C.), who awarded the certificates, Earl F. Morris, Chairman of the Institute's Board of Trustees, Harvey E. Solomon, Executive Director of the Institute, and Sandra J. Knapp of Sacramento, California, who was one of 29 graduates.

### FEDERAL JUDGE SELECTION PROCEDURES STUDIED BY ABA

ABA President Lawrence E. Walsh invited over 70 national figures to Vanderbilt University this month to analyze and discuss current procedures which operate to put a federal judge on the bench, including Justices of the U.S. Supreme Court.

President Walsh, a former federal judge himself, started planning for the conference shortly after assuming the ABA Presidency convinced

(See SELECTION page 3)

### COURT OF CLAIMS SCHEDULES JUDICIAL CONFERENCE

The U.S. Court of Claims has scheduled its Judicial Conference for May 21 in Washington, D.C.

The one-day conference's theme is "Practice Before the U.S. Court of Claims: Active Dialogue on Current Issues Confronting Bar and Court".

Following opening remarks by Chief Judge Wilson Cowen, the morning session will be devoted to contract litigation, decision making

(See CONFERENCE page 3)



(PRETRIAL from page 1)  
fiscal 1974. The districts were instructed to draw a systematic sample from the listing based on every tenth case. The sample would produce data on: (1) number of persons released on bond; (2) number of persons detained; (3) type of bond; (4) recidivism rate for releasees; (5) type of rearrest while on bail; (6) attitude of court family in regards to implementation of a demonstration Pretrial Services Agency; (7) community resources available in the district; (8) type of Pretrial Services Agency preferred by the chief U.S. probation officer (Board or Probation); (9) general comments from the chief U.S. probation officers as to their willingness to cooperate with a Board of Trustees program and general comments on the demonstration project.

Each of the 30 districts responded with the following results: (1) 22 of the districts were responsive to the demonstration effort, 3 districts chose not to participate in the project, while the remaining 5 were undecided; and (2) 27 of the districts indicated they would favor a Probation Division operated model while only one selected a Board of Trustees with the remaining district indicating an unwillingness to participate. In addition to using hard data produced by the survey, each regional probation administrator was asked to review the survey forms and to provide subjective information on each district as to its ability and willingness to participate in the project.

Following the collection of data based on both objective and subjective information, the original list was reduced to 17 districts from which the final 10 demonstration sites would be chosen. Since the overwhelming majority of the districts preferred a Probation Division operating model, some difficulties were encountered in obtaining districts which would be receptive to a Board of Trustees-operated Pretrial Services Agency. Numerous contacts were made with various districts to determine if they would be responsive to a Board of Trustees model.

After the list of 17 was reviewed by the A.O., the Probation Division was asked to give priority to 10 of the 17 included on the list and to indicate a preference as to which districts would be more suitable for a probation-operated agency or a Board of Trustees-operated agency.

When the A.O. agreed on the 10 districts they were submitted to the Justice Department for their review, comment, and approval. The Justice Department placed the list before an advisory council of the U.S. Attorneys who approved the selections. All of the U.S. Attorneys in the districts to be affected were contacted by the Department and given an opportunity to express their views regarding the program.

The Attorney General then submitted a letter of concurrence with the selections to the Chief Justice. The A.O. contacted the Chief Judge of each potential district and asked if he would cooperate if his district were designated by the Chief Justice. All Chief Judges agreed to participate although in some districts where the question was put before the full panel of judges several judges voted against the project coming into their districts. In each instance the majority agreed to serve as a demonstration district. The Chief Justice then designated the following districts:

*Board Agencies*

Central California—Los Angeles

Northern Georgia—Atlanta

Northern Illinois—Chicago

Maryland—Baltimore

Eastern Michigan—Detroit

*Probation Agencies*

Western Missouri—Kansas City

Eastern New York—Brooklyn

Southern New York—New York City

Eastern Pennsylvania—Philadelphia

Northern Texas—Dallas

Certain districts were eliminated from consideration because of attributes unique to the district, such as a large number of illegal aliens or an exceptionally high number of drug cases. The 10 districts selected could accommodate a Pretrial Services Agency. The benefits derived from Pretrial Services Agencies in those districts

would impact on a greater number of persons coming through the federal system than would have occurred if a different mix of districts had been selected.

The Pretrial Services Branch visited all 10 districts and held meetings with the chief judge, chief probation officer, U.S. magistrate, public defenders, U.S. attorneys and U.S. marshals.

As expected the degree of acceptance of the program varied by district and individuals within the districts. The degree of resistance has not appreciably affected the rate with which the projects are being developed.

The greatest causative factor relating to the rate of development in the Boards of Trustees Agencies as opposed to the Probation Agencies generally is the length of time required to get a Board of Trustees Agency operating which is approximately 90 days.

The first priority was to get the Boards formed. Their first task was to meet, accept, and screen applications and select a chief pretrial service officer.

The Northern District of Illinois, probation operated agency, was the first to begin interviewing clients. Northern Georgia (Atlanta) and Northern Texas (Dallas) followed and Central California (Los Angeles) began interviewing the last week in December 1975.

From October 6, 1975, through December 31, 1975, Chicago interviewed 125 defendants, approximately 35% of the total filings in the district for that period of time. From this group they received 40 cases, 35% for supervision.

In cooperation with the Federal Judicial Center a seminar for pretrial services administrators and supervisors was held during the first week of December 1975.

The seminar lasted 3-1/2 days and the topics discussed ranged from legislative history and philosophy to operation and procedure. Based on the positive response from this training program, a week-long seminar for pretrial service officers is planned for this month.



SELECTION from page 1)

that the importance of the subject dictated top priority for the meeting.

For two days the conferees, all highly knowledgeable on selection procedures, scrutinized each step of the process. The main thrust of the analysis, of course, was on the role of the ABA. With all twelve members of the Association's standing Committee on the Federal Judiciary present, full disclosure on exactly how the Committee functions was possible.

It was obvious from the start that many of those present, even though they had long tenure in the legal profession, were not intimately acquainted with just how this important Committee works. What was quickly learned was that it operates thoroughly, expeditiously and carefully, and that each member gives first priority to his task as soon as a name is submitted. The Committee receives names of candidates from the President and rates the nominees prior to the time they are made public.

Some hard questions were asked and severe criticism was leveled at the composition of the Committee which is a group of all-white, all-male "elitists". Also questioned was how much value should be placed on trial experience, judicial service on another court, experience as an academician, and professional evaluations made by state and local bar associations.

David Cohen, President of Common Cause, strongly urged that in those instances where a highly controversial name is being considered that the ABA vigorously lobby for their stand. The conferees were far from agreement on this. Other issues pressed were: should representatives of other disciplines take part in the process including groups such as consumer advocates, civil rights, and women's rights; also, should more attention be given to qualities other than legal experience, such as temperament, diligence, work habits, and potential for procrastination.

The conference was not designed to draft consensus statements or

## BICENTENNIAL PLANS PROGRESS

The Bicentennial Committee of the Judicial Conference of the United States distributed biographical questionnaires to all members of the federal judiciary, as the first step in the production of a biographical directory of all judges who have served on the federal bench since the birth of our nation. Similar questionnaires are presently being completed about each deceased federal judge by the circuit Bicentennial subcommittees. When the questionnaires have been completed, a biographical directory will be printed and distributed to all federal judges, libraries, law schools, and other interested groups.

As earlier reported, the Committee is also at work on several other Bicentennial projects. It has contracted with Metropolitan Pittsburgh Public Broadcasting, Inc. to prepare five films about early federal court decisions that were

significant in the development of our federal system. Scripts are presently being prepared, and filming is expected to begin in April. Showing of the movies on public broadcast stations is anticipated during the fall of 1976.

Professor Sidney Hyman of the University of Illinois at Chicago has been engaged to prepare a book for the lay reader, especially high school and college students, about the role of the courts in our federal system. Professor Hyman is making excellent progress, and the Committee hopes to have the book available for distribution by the beginning of the next school year.

On the local level, several circuits have indicated a desire to prepare a history of their court. If any other circuits wish to submit proposals for preparation of circuit histories, the Committee will be happy to consider their proposals.

recommendations but some scholarly papers were prepared and distributed which will assist in evaluating an old process and possibly developing new procedures. ¶¶

### JUDGE GRIFFIN B. BELL RESIGNS

The federal judiciary suffered a great loss this month with the resignation of Judge Griffin B. Bell of the Fifth Circuit.

Judge Bell, who took his oath as a Circuit Judge October 6, 1961, returned to the Atlanta law firm he left for the bench 15 years ago.

In his letter of resignation sent to President Ford in January, the Judge said: "I have an abiding faith in our federal courts and particular pride in the Court on which I have been privileged to serve. I leave with the satisfaction and reward which one gains from being able to render needful public service."

### (CONFERENCE from page 1)

procedures of the court, and, third-party practice and class actions. The afternoon session will be devoted to the topics of Discovery in Tax Litigation and Simplification of the Court's Rules.

The newly-completed "Manual for Practice in the U.S. Court of Claims," prepared by a Subcommittee of the Court of Claims Committee of the Bar Association of the District of Columbia will be available for purchase during the conference.

Judge Marion T. Bennett, Chairman of the 1976 Judicial Conference, said that the one-day program "has been planned to qualify as continuing legal education, now required in some states as a condition for retention of bar membership. It is the opinion of the Joint Committee of Government Attorneys on Recertification Requirements that time spent at a conference such as this should be accredited toward recertification."



## SENIOR JUDGES GIVE VALUABLE AID TO FJC

The Center has been fortunate in receiving valuable assistance throughout the years from Mr. Justice Clark, the late Judge Alfred P. Murrah, and Judge William J. Campbell.

Joining this corps of experienced judges are several who have recently taken senior status, including Judges Albert C. Wollenberg (N.D. Cal.), A. Sherman Christensen (Dist. Utah), and Edwin A. Robson (N.D. Ill.).

In addition to making presentations at the Federal Judicial Center, the judges will actively participate in meetings of supporting personnel, many of which are held in the regions.

Judge Hoffman, in commending this service said, "This contribution from outstanding members of the judiciary, each of whom has earned national recognition on the federal bench, is of enormous assistance to the Center. It will permit a continuation of our policy which calls for the presence of a federal judge at every FJC meeting. They bring talent and experience we could never recruit from the outside." ■

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

**Parole Bill.** The House and Senate conferees have agreed on the report of the conference committee with respect to H.R. 5727 to establish an independent and regionalized U.S. Parole Commission and to provide fair and equitable parole procedures. **The bill has now been signed into law by the President.** The bill would establish an independent nine member Parole Commission within the United States Department of Justice, that would serve terms of six years under Presidential appointment by and with the advice and consent of the Senate.

The Commission would have authority to set its own guidelines and procedural rules. The Administrative Procedure Act will apply to the adoption of rules by the full Commission and guidelines for parole are rules and regulations within the meaning of that definition. The budget recommendations shall be separate from other agencies of the Department of Justice, but presumably would be handled in the same manner as budget requests from other executive agencies under the bill. Supervision of the parolees may be accomplished as presently through the United States Probation service. Under the bill a prisoner shall be eligible for release on parole after serving one third of such term but this is applicable only to prisoners confined and serving a definite term or terms of more than one year. A prisoner, if he chooses, may be represented at the parole determination proceeding by a representative who qualifies under rules promulgated by the Commission. The rules shall not exclude attorneys.

Revocation of parole provided for under the bill would require a preliminary hearing at or reasonably near the place of the violation or arrest to determine if there is probable cause to believe he has violated a condition of his parole. Upon a finding of probable cause a revocation hearing takes place at or reasonably near the place of parole violation or arrest within 60 days. The parolee is entitled to be represented by an attorney and such counsel can be compensated in accordance with the Criminal Justice Act. The parolee can appear and present witnesses and relevant evidence on his own behalf. The Commission may subpoena witnesses and evidence and pay witness fees. If a person refuses to obey such a subpoena, the Commission may petition the court for an order requiring that individual's appearance. An abbreviated revocation proceeding is provided for in cases in which the parolee has a new criminal conviction.

**Patents.** The Senate passed on

March 1, S. 2255, for the general revision of the patent laws, Title 35 United States Code, and for other purposes.

Section 135A of this bill relating to reexamination would allow direct appeals not only to be referred directly to the United States District Court for the District of Columbia but would also require that the court hold a de novo proceeding at which any party could introduce into the record any information not previously made part of the record and would allow such party to seek reversal of the decision below on the basis of new information.

Sections 141 through 144 of the bill would allow a diversion of certain other categories of appeals pending before the Court of Customs and Patent Appeals to the United States District Court for the District of Columbia to be handled under the provisions of Section 141 in that court. Apparently the Patent Office itself could seek diversion of such appeals from the Court of Customs and Patent Appeals to the United States District Court since Section 3(d)(3) of the bill provides that the Solicitor of the Patent Office shall become a party to proceedings before the Patent Office, and as a party can exercise the power under Section 141 to move patent appeals out of the Court of Customs and Patent Appeals and into the United States District Court. According to the testimony reflected in the Congressional Record of February 26, 1976, this bill is being opposed by the organized Patent Bar.

**Copyright.** S. 22, a major bill to revise the obsolete copyright law of 1909, passed the Senate, 97-0, on February 23. In the House, Rep. Kastenmeier's Subcommittee on Courts, Civil Liberties and the Administration of Justice is marking up H.R. 2233, similar House legislation.

**Bankruptcy — Salaries of Referees.** H.R. 6184 amending §40 of the Bankruptcy Act to vest in Congress the authority to set salaries of referees in bankruptcy was signed by the President on February 27, 1976 (P.L. 94-217). Under



the new Act referees' salaries have been increased to \$37,800.

**Bankruptcy Act — Bankruptcy of Major Municipality.** H.R. 10624, which has been passed in differing versions by both Houses of Congress has been reviewed by the conference committee, however no agreement has been reached.

**Judicial Disability and Tenure.** S. 10, introduced by Senator Nunn, which would establish a procedure in addition to impeachment for the removal of justices and judges, has been the subject of several hearings before the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee. Senator Nunn, Judge Ainsworth, an ABA representative and Judge Bell have been among those testifying.

**Civil Service Annuity Benefits—Judges.** The Subcommittee on Retirement and Employee Benefits of the House Committee on Post Office and Civil Service has held hearings on H.R. 11738 which would bar Civil Service annuity payments when an annuitant is entitled to a salary as a justice or judge of the United States. The hearings began on March 3 when testimony was received from Judge Homer Thornberry CA-5, Judge Marion Bennett, Ct. Claims, and Judge Oren Harris, U.S. District Judge E.&W.D. Ark. On March 4 testimony was received from Thomas A. Tinsley, Director of the Bureau of Retirement, Insurance and Occupational Health of the Civil Service Commission. The hearings will be continuing later in March.

**Black Lung Benefits Act Amendments.** The House on March 2 passed H.R. 10760 amending the Federal Coal Mine Health and Safety Act. The bill has been forwarded to the Senate.

This legislation provides that the district court of the state in which a claimant resides will have jurisdiction to review, by civil action, any decision by the Secretary of Labor.

Potentially, H.R. 10760 has ramifications for the magistrate workload as the Supreme Court recently ruled that a district court judge may refer cases involving review of administrative record, hence, black

lung cases, to magistrates for recommended disposition. Stipulated also in the bill is a Black Lung Disability Insurance Fund, to be set up in the Treasury Department for payment of premiums. Trustees of that fund could petition for review of any denied claim (if filed after December 31, 1975) in the U.S. Courts of Appeals.

**Truth in Leasing Act.** Both the Senate and House have passed H.R. 8835, a bill which would apply to consumers' leases of cars, furniture, appliances, and other durable goods. The conference report has been filed and action is expected in the near future.

The bill provides for class action, civil liability of such amount as the court may allow, except that as to each member of the class no minimum recovery is to be applicable, and the total recovery is not to be more than \$500,000 or 1% of the lessor's net worth, whichever is less.

**Equal Credit Opportunity.** The conferees have filed a report on H.R. 6516 which amends the Equal Credit Opportunity Act. There are a number of strengthening provisions in the bill and it should be noted that this legislation also continues to provide for class actions. Of course, individual actions may also be brought by aggrieved applicants for credit without regard to the amount in controversy. In addition, the Attorney General may bring enforcement actions under the law.

**Antitrust.** The Senate Judiciary Committee has continued hearings and mark up sessions on S. 1284 to improve and facilitate the expeditious and effective enforcement of the antitrust laws. The last title of the bill provides for parens patriae actions. In the House, similar legislation (H.R. 8532) has been granted a rule for consideration.

**Criminal Justice Information.** Companion bills, S. 2008 (Tunney) and H.R. 8227 (Edwards) remain pending at Subcommittee level. The legislation merits notice as it would govern the use and dissemination of all criminal records, including pre-sentence reports, and pretrial release, probation and parole records.

**Federal Trade Commission Bill.** S. 642, of interest due to its possible

effect on appellate jurisdiction, has been reported by the Senate last session. The bill would require individuals and companies appealing Federal Trade Commission cease and desist orders to file in that circuit where the person lives or the company maintains its principal place of business. Presently appeals may be brought in any circuit where a person or company does business.

**Speedy Trial Amendments Bill.** Congressman Jones has introduced H.R. 12288 to amend the Speedy Trial Act to prevent the counting of Saturdays, Sundays and Federal holidays in the application of time limits established by that Act. The bill has been referred to Rep. Kastenmeier's House Subcommittee, and no immediate action is expected.

**Prisoner Suits.** H.R. 12008 was introduced by Congressman Railsback on February 19 to reduce the burden on the Federal courts of prisoner suits brought under §1983 of Title 42, United States Code and to improve the administration of state institutions holding confined persons. The bill would permit actions under §1983 only in those instances where the individual first exhausted state administrative remedies. The bill is pending in the Subcommittee on Courts, Civil Liberties and the Administration of Justice.

**Financing Public Participation.** Hearings are being held on S. 2715, a bill to provide for reimbursement, by Federal agencies and departments, of citizens who contribute to agency decisions and for fee awards to those bringing suits for review of agency decisions when the court deems the action served the public's interest.

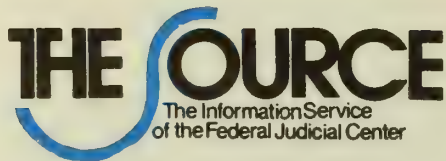
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William E. Foley, Deputy Director, Administrative Office, U. S. Courts





(The following publications are listed for information only. However, those in **boldface** are available from the FJC Information Service.)

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- Criminal Justice Newsletters [bibliography]. Anne Newton. 7 Crime & Delinq. Lit. 367-390 (Sept. 1975).
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Convicted After Trial, 1967-68. Lawrence P. Tiffany, et al. IV(2) J. Legal Studies 369-390 (June 1975).



### SPECIALIZED TRAINING PROGRAMS AVAILABLE

Since the establishment of its Specialized Training Program in 1971, the Federal Judicial Center has funded 1,263 educational short courses for various members of the Federal Judicial Branch.

The Education and Training Division presently conducts a Specialized Training Program under which employees of the Judicial Branch may apply for funds to defray tuition costs for short educational courses offered by the U.S. Civil Service Commission and other agencies.

Courses must be related to the applicant's principal job assignment. Applications must be submitted to the Education & Training Division, Federal Judicial Center, 1520 H Street, N.W., Washington, D.C. 20005, not less than two weeks in advance of the registration date, and approval must be received by the applicant prior to enrollment in a course.

### SENIOR STAFF ATTORNEY VACANCY AT CA-3

The U.S. Court of Appeals for the Third Circuit invites applications for the recently authorized position of SENIOR STAFF ATTORNEY located in Philadelphia. The Staff Attorney will provide legal support to the Court, participate in the analysis and management of business of the courts and supervise other staff attorneys. Qualifications desired include those of a GS-12 law clerk to a federal judge plus five years legal and administrative experience. Salary range is \$21,000 to \$31,500 depending on qualifications.

Applicants should submit written inquiries and resumes to: William A. (Pat) Doyle, Third Circuit Executive, 20617 U.S. Courthouse, Philadelphia, Pennsylvania 19106.

### CA-2 HOLDS ITS FIRST MERIT AWARDS CEREMONY

A woman who has become a expert in admiralty law during her 50 years working in the office of the Clerk of the Court in the U.S. Courthouse in Brooklyn, the man who created programs and policies which made possible the implementation of the unique organization of the court reporters in the Southern District, and the secretary to the Chief Judge of the Northern District of New York were among those presented with awards at a ceremony held recently honoring the first recipients of merit award in the Second Circuit Merit Award Program.

Judge Thomas Meskill (CA-2) presided at the ceremony, held in the Courthouse, and Judge Henry Bramwell (E.D. N.Y.) assisted in the presentation of awards.

Judge Harold R. Medina (CA-2) who has been a federal judge since 1947, addressed the awards recipients, singing in Latin, and telling them that work was good for them.

Circuit Executive Robert D. Lipschier read remarks from Chief Judge Irving R. Kaufman congratulating the award recipients. Judge James Oakes (CA-2) presented career awards to those with 10 or more years of service in the federal judiciary.

Marie Baretti, a Deputy Clerk in the office of Lewis Orgel (E.D. N.Y.) started work there as a clerical assistant under Percy G.B. Gilke in 1924. Ms. Baretti was cited as "an inspiration to all." Simon A. Lubow as chief court reporter in the Southern District, oversaw the implementation of programs and policies which enabled the reporters' pool to become one of the most efficient court reporters' organizations in the federal system. Mr. Lubow was nominated by his fellow reporters for, among other things, eliminating destructive competition for assignments among reporters "which has resulted in a rare esprit de corps."

Gemma DeVirgilio, secretary to Chief Judge James Foley (N.D.



(N.Y.) was cited for her initiative and creativity in taking on a range of administrative responsibilities in addition to her regular secretarial duties.

Others recognized for their contributions to the Second Circuit were the Case Processing Unit in the Court of Appeals; the Closed Records Unit in the Southern District; Anthony Viceroy, Chief of the Naturalization Office for the Southern District Clerk of Court; Morris Kuznesof, Deputy Chief Probation Officer in the Southern District; and Edith Minkoff, Administrative Assistant for the Bankruptcy Office in the Southern District.

Receiving awards for their contributions in the district courts of the circuit were Irving Gold of the Eastern District Probation Department, Daniel Simon, Chief Court Reporter in the Eastern District, Keith Sylvester, Courtroom Deputy in the District of Vermont, and Edward Aponte, Orders and Appeals Clerk in the Southern District.

In addition to the district and circuit awards, pins were given to over 100 people who completed 10 or more years of service to the courts of the Second Circuit. Ms. Baretti, with more than 50 years of service, headed the list. Others honored included A. Daniel Fusaro, Clerk of the Court of Appeals, who has worked for that court since 1934, two years before the Foley Square Courthouse was opened, and Jack Potter, now working in the Southern District Magistrate's office, who has worked for the federal judiciary for 45 years.

The Merit Awards Program was established by the Second Circuit to give recognition to employees of the courts who have excelled in the performance of their duties, as well as to those who have given many years of service to the courts.

The Merit Awards Planning Committee consisted of Judges Meskill and Bramwell. Circuit Executive Robert Lipscher, who conceived the idea of a merit program for the Second Circuit, also served on the Planning Committee.



Judge Thomas Meskill (CA-2) and Henry Bramwell (E.D. N.Y.) congratulate Court Merit Award winners, left to right, Morris Kuznesof, Edward Aponte, Judge Meskill, Judge Bramwell, Edith Minkoff and Anthony Viceroy.

### LACK OF FUNDS MAY HAMPER PRISONER REPRESENTATION

Inadequate federal funding of the newly-created legal Services Corporation may seriously hamper the legal representation of prisoners petitioning for federal remedies.

This situation represents a serious setback for the federal judiciary since at the present time there is no other source of funding available, according to the General Counsel of the Administrative Office of the U.S. Courts.

The question of whether the Legal Services Corporation would be able to furnish counsel in 1983 prisoner cases has concerned many leading members of the federal judiciary.

However, in a recent letter to the General Counsel of the Administrative Office, Carl H. Imlay, the Executive Vice President of the Legal Services Corporation, E. Clinton Bamberger, Jr., said, in part, "As you would expect, the Corporation is receiving many inquiries about the availability of funds for new efforts to provide legal assistance in civil matters for persons who are unable to afford adequate counsel.

"We are guided by the Congressional declaration that 'there is a need . . . to continue the present vital legal services program.' The appropriation we have now is not

even sufficient to support adequately the efforts funded by our predecessors, the Community Services Administration and the Office of Economic Opportunity. We do not have funds in the current fiscal year to support additional efforts. We hope that the Congress will appropriate additional funds in future years."

### BILL INTRODUCED TO REDUCE §1983 PRISONERS' SUITS

Congressman Thomas F. Railsback Febuary 19 introduced a bill designed "to reduce the burden on the federal courts of prisoner suits brought under Section 1983 of Title 42, U.S.C. to improve the administration of state institutions holding confined persons and for other purposes."

The bill gives the state Attorney General authorization to institute a civil action in federal court in instances in which he has reasonable cause to believe that the states or its agents are subjecting inmates to an unconstitutional deprivation of their rights.

Before instituting such a suit, the Attorney General certifies that he has notified the appropriate officials of the institution of the alleged deprivation of rights and that he is satisfied that the officials have had a


(See §1983 page 8)



(§1983 from page 7)

reasonable time to correct the problem.

When an action has been commenced in any federal court seeking relief from such conditions, the Attorney General may intervene by certifying that the case is of general public importance.

Significantly, the bill does not allow prisoners to seek relief in federal district courts unless it appears that they have exhausted all state administrative remedies which are available. The Bill, H.R. 12008, has been referred to the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice. 

#### LAW DAY: MAY 1

The American Bar Association has requested that all members of the federal judiciary schedule appropriate, formal observations of Law Day on May 1.

This year the theme is "Two-hundred Years of Liberty and Law" so that those celebrating Law Day may choose themes coupling the growth of the Nation's judicial system with the Bicentennial of the Nation's Revolution.

## dojc calendar

- Apr. 5-9 Orientation Course for Probation Officers, Washington, DC
- Apr. 6-9 Seminar for District Court Clerks, Phoenix, Ariz.
- Apr. 7 Judicial Conference of the United States, St. Paul, Minn.
- Apr. 7-9 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minn.
- Apr. 14-16 Seminar for Fiscal Clerks, St. Louis, Mo.
- Apr. 21-23 Management Program for Probation Supervisors, Atlanta, Ga.
- Apr. 22-24 Regional Seminar for Bankruptcy Judges, New Haven, Conn.
- Apr. 23-24 Conference for Metropolitan Chief Judges, Santa Fe, New Mexico
- Apr. 26-28 Management Program for Probation Supervisors, Indianapolis, Ind.
- Apr. 28-30 Regional Seminar for Bankruptcy Chief Clerks, Denver, Colo.
- May 2-5 Seminar for Bankruptcy Judges, Monterey, Calif.
- May 4-7 Instructional Technology Workshop for Probation Training Officers, Memphis, Tenn.

**May 10-12 Seventh Circuit Judicial Conference, French Lick, Ind.**

**May 11 Workshop for District Judges (Sixth Circuit), Columbus, Ohio**

**May 12-14 Management Program for Probation Supervisors, Hartford, Conn.**

**May 12-15 Sixth Circuit Judicial Conference, Columbus, Ohio**

**May 17 Judicial Conference Advisory Committee on Civil Rules, Washington, DC**

## PERSONNEL

### Appointment

George N. Leighton, U.S. District Judge, N.D. Ill., Feb. 27.

### Elevation

Nauman S. Scott, Chief Judge, U.S. District Court, W.D.La., Feb. 19.

### Nominations

Gerald L. Goettel, U.S. District Judge, S.D.N.Y., March 2.

Charles S. Haight, Jr., U.S. District Judge, S.D.N.Y., March 2.

### Deaths

Marvin Jones, Senior Judge, U.S. Court of Claims, March 4.

Charles H. Carr, U.S. District Judge, C.D. Calif., March 14.

### THE THIRD BRANCH

VOL. 8, NO. 3 MARCH 1976

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## IN REVIEW: POUND REVISITED CONFERENCE

The Judicial Conference of the United States, the Conference of Chief Justices, and the American Bar Association unified their efforts and held a significant meeting in St. Paul, Minnesota this month. The Conference which called together over 250 leaders in the legal profession was planned, the Chief Justice said in his keynote address at the State Capitol, "to take a hard look at how our system of justice is working, to consider whether it can cope with the demands of the future, and to begin a process of inquiry into needed change."

Quite appropriately the meeting was planned for the year 1976, just 70 years after Dean Roscoe Pound made his famous speech in the same setting on "The Causes of Popular Dissatisfaction With the Administration of Justice."

In 1906 Dean Pound received instant reactions of shock when he criticized the judicial system in this country as it was then operating. He pointed an accusative finger at unnecessary and interminable delays; at archaic procedures in the courts; at appalling lack of efficiency and at "contentious lawyers" whose cavils clogged up the courts and cost clients unnecessary money. Members of the bar immediately denied, defended and refuted the Dean's accusations. But time has served to show that then, as now, there was basis for criticism, and as ABA President Walsh said at one session which ended with a sharp dictum of lawyers generally, "Well, I guess we asked for it."

The array of participants read like "Who's Who in the Legal Profession" and included members of the U.S. Supreme Court, law professors, state and federal judges, the Attorney General, the Solicitor General, and individuals in and out

of the legal profession who have been vocal in their demands for change. The format of the conference did not call for consensus statements, but here are some of the ideas pressed by proponents through formal papers or discussions:

- The courts, state and federal, are deluged with heavy caseloads; we are a litigious nation.
- We should be looking not for ways to keep cases out of the courts but ways to encourage cases

(See CONFERENCE page 2)

### DIVERSITY BILL REQUESTED

On April 22 the A.O. sent Congress, on behalf of the Judicial Conference, a draft bill to amend Section 1332(a)(1) of Title 28 U.S. Code. The draft bill calls for a modification of the jurisdiction of the district courts by prohibiting the filing of a civil action by a plaintiff in a diversity suit in a district court located in a state of which he is a citizen.

## SPOTLIGHT: INTERVIEW WITH CONGRESSMAN RODINO



CONGRESSMAN PETER W. RODINO, JR.

Congressman Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, is not only one of the most influential members of the Congress but heads the House Committee which handles legislation of prime interest to the Judiciary. In the following wide-ranging interview, he discusses such current issues as the problem of sentencing disparity, the possibility that S.1 (the bill codifying the federal criminal law) will be enacted and the need for higher judicial salaries.

**Does the recent increased interest in sentencing manifest a discontent by the general public and the Congress with the present system?**

It's not so much a discontent with the structure of the system, but more a frustration that the system

(See INTERVIEW page 4)



(CONFERENCE from page 1) which should be pressed for judicial resolution, especially those which are related to the rights of the poor, the aged, and minority groups.

- The right to jury trial and how such trials are conducted should be re-examined but that is not to say juries should be cut back or eliminated.

- Lawyers should carefully consider any proposal to eliminate jury trials in civil cases. Litigants can always waive juries in civil cases and since most do not, there is reason to believe Americans gen-

erally prefer to preserve this right.

- Equitable procedures for handling minor disputes should be developed, to save the time of the judge, to bring speedier resolutions to disputes, and to make it less expensive. To this end, small claims courts should be studied to determine, among other things, whether another forum might be better, possibly through the use of paralegal personnel with power to make a final determination.

- The establishment of a new level of tribunals should be considered. This would attenuate the growth of court caseloads and would handle

such matters as factual disputes over environmental issues, air and water pollution, workmen's safety issues, and Social Security.

- The problems of the courts cannot be solved by merely adding more judges; indeed, the greater the number, the less the prestige. "The less the prestige, the less the public respect, an essential ingredient of a satisfactory judicial system."

All papers delivered at the conference are to be printed and bound in one volume by the American Bar Association, and will be available later. ■

### JUDGE HASTIE (CA-3) DIES APRIL 14

Judge William H. Hastie (CA-3), the first black judge appointed to the federal judiciary, died suddenly this month. He was 71 and had taken senior status in 1971 following an outstanding career as a member of the faculty of Howard University Law School, Dean of that School, Governor of the Virgin Islands and a leading member of the Third Circuit's bench from his appointment in 1949 until he took senior status. From 1967 until 1971 he was Chief Judge of that Court.

On the occasion of his death, Chief Justice Warren E. Burger issued the following statement:

"The death of Senior Judge William H. Hastie, former Chief Judge of the United States Court of Appeals for the Third Circuit, is a great loss to the judiciary and to the country. For me it is also a personal loss since we have been friends for more than two decades and often sat together on the courts of appeals and worked closely together in the Judicial Conference of the United States. (At the time of his death he was Chairman of the important Judicial Conference Advisory Committee on Appellate Rules.)

"Judge Hastie was one of the ablest judges ever to sit on our courts and he would have graced any court with his superb abilities and his finely attuned judicial temperament. His remarkable career as a lawyer, as an educator and in public office can serve as a model for all lawyers and judges."

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Prior to its adjournment on April 14, 1976 for the Easter Recess, the Congress cleared a number of measures of importance to the judiciary, and took action on numerous items.

### Enactments.

**H.R. 200**, the two-hundred mile "Fisheries Management Zone" was signed by the President on April 13 (PL 94-264). The new law may increase the number of cases involving violation of fisheries laws, at least in those districts bordering coastal waters.

**The Consumer Credit Protection Act** has been amended (H.R. 6515, Signed March 23, 1967, PL 94-239) to include discrimination on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract).

**H.R. 8835**, to assure meaningful disclosure of lease terms to limit liability when leasing property primarily for personal, family, or household purposes, was signed March 23, (PL 94-240). The act provides for federal jurisdiction in suits for violations.

**H.R. 10624**, to revise Chapter IX of the Bankruptcy Act was signed into law on April 8, 1976 (PL 94-260). It provides by voluntary re-

organization procedures for the adjustment of debts of municipalities.

**S.3197**, to amend Title 18 USC, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information, was introduced by Senator Kennedy and referred to the Senate Judiciary Committee.

**H.R. 12750**, introduced by Congressman Rodino and referred to the House Judiciary Committee would also amend Title 18 USC to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information. Both bills have been the subject of hearings in the respective judiciary committees.

The House Judiciary Committee has reported H.R. 12048, amending Title 5 USC to improve agency rule making by expanding the opportunities for public participation, by creating procedures for Congressional review of agency rules, and by expanding judicial review. In the Senate, Senator Kennedy has introduced a similar bill, S. 3297.

### Bills Introduced.

**H.R. 13219**, to abolish diversity citizenship as a basis of jurisdiction of federal district courts was introduced by Congressman Benne and referred to the House Judiciary Committee.

### Congressional Action.

The House Judiciary Committee has ordered favorably reported H.R.



1193, amended, the Federal Firearms Act of 1975 but the report has not yet been filed.

The Consumer Product Safety Commission Improvements Act of 1976 has passed both Houses of Congress, and the House of Representatives has concurred in the Conference Report. Action by the Senate is expected following the Easter recess. The bill, *inter alia*, will make provision for the recovery of attorney's and expert witnesses' fees, and broadens the authority of the Commission to represent itself in civil and criminal actions.

The Senate Judiciary Committee has approved S. 1284, to improve and facilitate the expeditious and effective enforcement of the anti-trust laws. The bill will allow state attorneys general to bring actions to recover damages for antitrust violations.

The Senate has passed S. 2923, an original bill to amend the statutory ceiling on salaries payable to U.S. Magistrates. The bill would adopt the Judicial Conference recommendation concerning parity with referees in bankruptcy. The existing reference to 75 percent of a district judge's salary is deleted, and part-time magistrates would be permitted up to one-half the salary of a full-time magistrate. The bill is now pending in the House Judiciary Committee, Subcommittee on Courts, Civil Liberties and the Administration of Justice.

**Federal Election Campaign Act Amendments of 1976.** The Senate has passed S. 3065, which includes a provision requiring federal employees earning more than \$25,000 a year to make annual financial reports to the Comptroller General, which would be open to public inspection. The House version of the bill, which passed on April 1, does not contain a similar provision. The conferees have completed their work, but the report has not been issued.

**S. 287**, the Omnibus District Judgeship bill has passed the Senate and is now pending in the House Judiciary Committee. As

passed, it provides for 44 new district judgeships and makes permanent one temporary judgeship.

A clean bill to bar civil service annuity payments when the annuitant is entitled to salary as a justice or judge of the United States has been ordered favorably reported by the House Committee on Post Office and Civil Service. H.R. 12882 would apply only to justices or judges appointed after the enactment of the bill, would bar annuity payments during active service on the bench, and would provide for redeposit by those present or former judges who voided their rights to annuities by accepting lump sum payments upon their appointments to the bench.

Senator Eastland has introduced S. 3153, to raise the amount in controversy required to establish federal jurisdiction from \$10,000 to \$25,000. The bill is now pending in the Senate Judiciary Committee.

**H.R. 12601**, to amend Section 376 of 28 USC in order to reform and update the existing program for annuities to survivors of federal justices and judges was introduced by Congressman Thornton and referred to the House Judiciary Committee.

The House of Representatives has passed, and sent to the Senate, H.R. 8532, the Antitrust *Parens Patriae* Act, which was discussed in the last issue of *The Third Branch*.

The Subcommittee on Labor of the Senate Labor & Public Welfare Committee has conducted hearings on H.R. 10760 and S. 3183, the Black Lung Disability Benefits Program.

**H.R. 12762**, to amend Chapters 5 and 7 of Title 5 USC to provide for the award of reasonable attorney fees, expert witness expenses, and other costs reasonably incurred in proceedings before federal agencies was introduced March 3 by Congressman Drinan, and referred to the Judiciary Committee.

**H.R. 12963**, to increase the salaries of justices, judges, and certain other personnel in the judicial branch, was introduced by Congressman Treen on April 1, and

referred to the House Judiciary Committee.

**H.R. 12968**, to amend the Federal Rules of Evidence to permit fair and effective prosecution for rape by providing that evidence of an individual's prior sexual conduct is not admissible in any action or proceeding if an issue in such action or proceeding is whether such individual was raped or assaulted with intent to rape, introduced by Congresswoman Holtzman and referred to the Judiciary Committee.

**H.R. 12976**, to amend the Immigration and Nationality Act to authorize certain courts which have naturalization jurisdiction to retain up to \$20,000 of the fees collected in naturalization proceedings held in such courts in any fiscal year was introduced by Congressman Rinaldo and referred to the House Judiciary Committee. ¶

### CCPA SETS THIRD ANNUAL JUDICIAL CONFERENCE

The Third Judicial Conference of the U.S. Court of Customs and Patent Appeals will be held in Washington, D.C. May 10.

The Conference will be composed of the Chief Judge and the Associate Judges of the CCPA and of the U.S. Customs Court, members of the International Trade Commission, officials of the Treasury and Justice Department, U.S. Customs Service, and invited members of the Bar. Lawrence E. Walsh, American Bar Association President, will address the Conference.

The program is devoted to coming events and their effect on practice in the fields of law involved. Specific topics include the CCPA annual report, proposed Rule changes, additional law work involving the International Trade Commission, how to win an appeal, and improvements in the jurisdiction of the Customs Court. This year an extended opportunity will be provided for questioning of panel members.



(INTERVIEW from page 1)

doesn't seem to be working fairly; it seems inequitable.

**Are you talking about disparity?**

Yes, and that, of course, does arouse many people. It creates the appearance of unfairness. The whole problem was clearly revealed when the Federal Judicial Center itself conducted a study which found that in some instances where the same test case was given to different judges, a great disparity in sentencing was evident.

This is something that has to be addressed. People wonder, first of all, whether or not it may be just because the judge is simply unfair. They wonder whether or not there may be corruption or whether there's been influence. People begin to clamor that we have a system of justice that just isn't working, and they naturally lose confidence in that system. I think something must be done about it. I've been studying the problem over a period of time—hearing it especially from people out in the street, getting it generally from the public, and seeing the studies that have been conducted.

**How would your Bill creating a sentencing commission help to correct this?**

This concept, as you may know, was originally introduced by Senator Kennedy. I reviewed his Bill, and I felt that it was a good vehicle with which the Congress could study the issue. I introduced it in the House. I think a commission of the sort proposed by the Bill is desirable. We have to promulgate guidelines that will be predictable and fair. We want to rely on the expertise of this Commission after it studies the problem. Similar crimes, in situations where other factors are equal, should carry the same or similar sentences. If not, that is, when a sentence falls outside the guidelines established by the Commission, then we want a right of appellate review.

**Do you believe that appellate review of sentencing would be better than having sentencing by a panel of three district judges? Do you think the appellate judges are**

**in a better position to do it than district judges?**

Well, there is at least a further opportunity to be able to do this from a point of view other than that of district judges.

**Perhaps it would be a more objective system?**

I would hope so.

**Possibly because the defendant himself would be more assured knowing his sentence had been reviewed at a higher judicial level?**

Yes, at that point he has been at the district court level, and he may feel he was not sentenced fairly, and wants the review of a higher court.

**Do you anticipate the Bill will move rapidly in this session?**

Well, I have instructed the appropriate Subcommittee to do all the necessary staff work and to move on it, giving it priority status. I think it's tremendously important. If it is one of the things that somehow or other causes people to look upon our system of justice as unfair, then I think that we need to act. One of the main concerns I have generally is about the breakdown of confidence in all institutions of our government. If the administration of justice in particular breaks down I think we are in for a very rough period. I think we have got to give this Bill top priority.

**The Attorney General, as you know, favors the Bill.**

I know that the Attorney General has not only talked about it, but I think, in general, he has endorsed the concept.

**What opposition do you foresee?**

Well, I frankly don't know except perhaps if one were to make the argument that this would somehow make sentences lighter.

You know, there is a school of thought that believes that all we've got to do is be tough in order to be able to deal with the problem of crime. I think there may be an effort to try to generate this kind of opposition which in my judgment is not warranted. It is not well founded, because I think that in the end if we simply eliminate the disparity and we deal justly, we will be making some real advances in the

war against crime.

**There appears to be, at least in the Senate, a strong move by the leadership to arrive at some compromise on S.1, at least on some of the more controversial parts of the Bill. Is it possible there will be a similar move in the House?**

Well the situation regarding S.1 is very interesting. A while ago, Senator Hruska and Senator McClellan sought a meeting with me and Congressman Hungate, Mr. Hutchinson, the ranking Republican member of the full Judiciary Committee, and Mr. Wiggins, the ranking Republican member of the Committee on Criminal Justice which Bill Hungate chairs. We discussed whether or not we would be acting on S.1, and at that time (perhaps seven or eight months ago), we raised the possibility of considering it when and if the Senate approved it. At that time Senator McClellan told me that he thought the Senate was moving rather rapidly. After that meeting, I remember examining some of the great controversies that had already arisen regarding some of the provisions of S.1. Knowing that some members of the Judiciary Committee, Congressman Kastenmeier and Congressman Edwards, had served on the Brown Commission, I talked with them at some length. I envisioned that unless we were able to do something which was realistic as to procedure, I didn't think that we'd get anywhere. So, at that time, I advanced a notice that perhaps it might be well to separate at least the non-controversial issues to see if this would indeed be helpful in doing something at least about re-codification.

**Federal judges are concerned about the timing. As you know, the Bill as it is now drafted, they have one year to conform and they are wondering whether or not they will even be able to do something as basic as revise all the jury instructions.**

I must say that having talked with some individuals who I think are very perceptive about what would be necessary in order to make the transition—if indeed it were to take



place—that the one-year period is probably short of anything that is realistic. Here is a code, as we know it, that has been developed over a period of many years, and to expect a change—to expect that juries and judges and everyone involved would be tuned in within that period of time may just not be realistic.

**Our judges will be glad to know that you are sympathetic to their problems.**

Well, I feel that my sympathies are pretty well grounded because judges are the people who would want to make the transition most carefully.

**Are the controversial aspects really a small part of the total Bill?**

I don't think I can cite a percentage. But I suggested that we try to set up some kind of a liaison between the two committees, with our staff people meeting, so that there might be an opportunity from time to time to just review this as a possible procedure. I think that this has been done for some time, but, of course, we've been involved in so many other areas.

**What progress is being made?**

At the present time, a very great deal of staff work is being done on our side—a lot of staff work. We have been waiting on the Senate to take whatever action the Senate has said it might take. We are aware of the fact that Senator Mansfield and Senator Scott have moved on this, and that there has been some talk about trying to do this, but whether or not it actually comes about, I don't know. I understand the Bill has been reported out by the subcommittee without recommendation. What they are actually going to come up with in full committee is far from clear. It seems to me, though, that realistically speaking, those areas that are in controversy have really generated a tremendous degree of opposition. No matter where I've gone to address groups I immediately have been asked, "What about that S.1?" And people are not opposed just for the sake of being opposed, but because they look upon it as something that is going to infringe upon some of their basic

rights. People are strongly aroused.

**Outside the legal profession too?**

Yes, oh yes. I gave a lecture at Tulane, and I had a number of conversations regarding S.1, and most of them with people outside the legal profession. This happened also when I addressed a group at American University in Washington.

**Is this another indication that people are interested in their courts?**

Oh yes, absolutely. The one thing about S.1, of course, is that people seem to be aware generally of some of the very, very tough provisions that seem to intrude on the rights of individuals. And people see this intrusion as a potential infringement of basic liberties. Frankly, this is what we hear which, of course, impels us to act even more diligently. We must exercise this diligence for one thing because of the very length of the Bill, as well as the many provisions which are the basis for disagreement. There is much in S.1 that diverges from sound recommendations and from present law.

**By "present law" you mean what is in the Code now?**

What's in the Code, and what we find the Brown Commission actually reported.

**Aren't there some crimes now defined in the Code in five different sections in five different ways?**

Yes, yes there are. This is pretty well addressed though by the Bill that has now been introduced, H.R. 333, by Mr. Kastenmeier and Mr. Edwards and Mr. Mikva which is now I believe also H.R. 10850. I think it has been substantially revised in the new Bill.

**Do you have a special feeling about secrecy in Government and which papers should be public records and which should not?**

Yes, of course, I think secrecy in government generally is something that gives me great pause.

One of the big concerns that I have about how we operate in Government is whether or not the people have confidence that they are able to participate in the system and that Government is being open,

frank, and honest. I don't think that people want to know everything. And I don't think that people are just prying, but I do think that people want to be sure that what is being done isn't being done covertly or in a way that intrudes on their basic rights.

**There is some feeling within the judiciary that some removal procedures for judges should be set up short of impeachment. The Nunn Bill addresses this issue. What are your views?**

These problems develop whenever we have the question of additional judgeships coming up. We have been very aware of the problems that arise. I don't think I'm prepared to say just what we should or should not do, because while the problem of impropriety may be there, I don't know whether or not we could say that it is very widespread—that it requires that kind of attention. I think that we can always make the necessary changes or corrections. Probably when we consider some of our judgeship bills, we ought to address some of these questions.

**We're talking about removing a judge from actively handling cases when he is clearly not able to function.**

Well, I think that is a subject that ought to be addressed, but again I don't know how widespread the problem is. I consider the problem—the question or the subject of impeachment—as something that we have to address in a manner that causes us to look upon it as only a very extraordinary procedure. I would hope that we would find in cases like this some other kind of mechanism. I am sure the question will come up, when we consider the matter of additional judgeships.

**Judge Lawrence Walsh, President of the American Bar Association, met with about 70 people on the selection of federal judges recently. Do you have any ideas as to how to improve the process?**

Well, I really do believe that our people place a special importance on the judiciary as an institution, and appropriately look upon it as a

(See INTERVIEW page 6)



(INTERVIEW from page 5)

safeguard. It would appear to me that when you consider appointing judges, therefore, we really do have to find men and women not only of competence but who also have a special kind of basic character, proven from experience and based on their whole life style. I think that we can never be too careful in the selection process, and I think that this whole question of appointing judges, just out of political obligation is something very offensive because we are dealing with a very sensitive area of our democratic process.

**Do you think federal judicial salaries are too low?**

I think that's always a very legitimate grievance. I think that we've got to recognize that when you call upon good people you just cannot expect them to make extraordinary financial sacrifices. I think the mere fact that they dedicate themselves, give a lot of time, remove themselves from society almost, in order to do a proper job, then this had to be taken into account. The other side of the coin is, I think, that when the judges do find themselves in this kind of dilemma that it's less than becoming to make it appear that money is the end-all. I guess that also bothers me because it then becomes a question as to whether or not this is the end-all. But we ought to provide federal judges with the necessary kind of financial security so they can do their job without deep anxieties and concerns about whether their families are suffering—and there are many that are.

**Have you or your colleagues in the Senate run into any situations where good candidates for judgeships have declined an offer of a judgeship because of the low salary?**

Oh yes. I do know that some are serving now with great sacrifice. But I also know that there are others who would have, under other circumstances, welcomed consideration—who might have considered such an opportunity but did not because of the low salary.

**They can't afford it?**

Yes. First of all, their life style must be considered. Their families have been accustomed to a certain mode of living and all of a sudden you ask them to give this up. Unless he or she has made it financially, prior to their service on the bench, it becomes a problem.

**Education of their children seems to bother them.**

Oh, absolutely. And I guess you can make this case out for people in Government generally, which was one of the reasons I wish my own colleagues had the courage many years ago to simply say "Look. We are dedicating ourselves. We want to do a good job. We don't want to have any undue anxieties, any hardship concerns, we want to be adequately compensated, not just because we want to be adequately compensated, but in order to do the job." But we haven't done that either, and, as a result of that, unfortunately, even we in Congress have suffered. As a consequence of that when you get requests for increases in judicial salaries, it is inevitably tied with Congressional salaries, and you get a serious legislative problem. ■

**CHIEF JUSTICE CALLS FOR MAJOR CHANGES IN "DELIVERY" OF JUSTICE**

In his Keynote Address, April 7, to the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, delivered in the House Chamber of the Minnesota State Capitol where Roscoe Pound made his famous speech to the ABA in 1906, Chief Justice Burger said that fundamental changes in judicial procedures must be considered to meet the needs of coming decades.

**[Here are excerpts from the Chief Justice's address. The full text is available from the FJC Information Service.]**

We have been making both minor and major improvements from time to time—all of them valuable in their setting—but we have not really faced up to whether there are other

mechanisms and procedures to meet the needs of society and of individuals.

And, even if what we now have is presently tolerable, we must ask whether it will be adequate to cope with what will come in the next 25 or 50 years, given the dynamic expansion of litigation in the past ten years, the growth of the country, and the increasing complexity of both. . . .

Whatever risks may be involved in our probing and talking, we must be prepared to take them. There is nothing dangerous about studying and considering basic change, if the alterations will preserve old values and "deliver" justice at the lowest possible cost in the shortest feasible time. I do not, for example, think it subversive to ask why England, the fountainhead of all our legal institutions, found it prudent and helpful 40 years ago to abandon jury trials for most civil cases. If, as some American lawyers ardently advocate, it is sound to consider adopting British concepts of pretrial disclosure of all prosecution evidence in criminal cases, I hardly think we endanger the Republic if we also make thoughtful inquiries into England's civil and appellate procedures and their ideas of finality of judgments, short of three or four appeals and retrials. . . .

[Also] anyone who has observed both the American and British courts at close range knows that there is no more vigorous advocacy or fairer justice than in British courts, and at the same time they maintain strict regulation of lawyers' professional conduct, as we do not.

When juries are used, England's courts manage to do without spending days and weeks selecting a jury. Even the most ardent opponents of stricter regulation of lawyers are beginning to have some doubts, for example, about whether the jury selection process, which is provided as a means to insure fair impartial jurors, should be used as a means to select jurors favorable to one side or the other. . . .

The topics selected for this conference may raise in some mind the question that our objective is to reduce access to the courts. Of course, that is not the objective, for



what we seek is the most satisfactory, the speediest, and the least expensive means of meeting the legitimate needs of the people in resolving disputes. We must therefore open our minds to consideration of means and forums that have not been tried before. Even if what we have now has been tolerable for the first three-quarters of this century, there are grave questions whether it will do for the final quarter or for the next century.

To illustrate, but by no means to limit, let me suggest some areas of concern to all Americans, whatever place they occupy in our society. . . .

Ways must be found to resolve minor disputes fairly and more swiftly than any present judicial mechanisms make possible. This has at least two important consequences for our purposes: it means that there are few truly effective remedies for usury, for shoddy merchandise, shoddy services on a TV, a washing machine, a refrigerator, or a poor roofing job on a home; this means lawyers must reexamine what constitutes practice of law, because if lawyers refuse minor cases on economic grounds they ought not insist that [only] lawyers may deal with such cases.

It is time to consider a new concept that has been approached from time to time and has a background in other countries. To illustrate rather than propose, we could consider the value of a tribunal consisting of three representative citizens, or two non-lawyer citizens and one specially trained lawyer or para-legal. . . . Flexibility and informality should be the keynote in such tribunals and they should be available at a neighborhood or community level and during some evening hours.

As the work of the courts increases, delays and costs will rise and the well-developed forms of arbitration should have wider use. A reexamination of the processes of arbitration is in order.

Ways must be found to simplify and reduce the cost of land title searches and related expenses of home purchasing and financing, in



Pictured at the Opening Session of the "Pound Revisited" Conference at the Minnesota State Capitol are, from left to right: The Chief Justice; Governor of Minnesota, Wendell R. Anderson; Chief Justice of Minnesota, Robert J. Sheran; Charles S. House, Chief Justice of Connecticut and Chairman of the Conference of Chief Justices. (See accompanying story beginning on page 1: Pound Revisited Conference)

order to help offset the great rise in land and construction costs that have created barriers to home ownership. . . . few things are more likely "candidates" for use of modern computer technology than maintenance of land records and the process of examining land titles. . . .

Ways must be found to simplify and reduce the cost of transmitting property at death. Probate procedures can be simplified without diminishing certainty of title.

Ways must be found to give appropriate weight to ecological and environmental factors without foreclosing development of needed public works and industrial expansion by inordinate delays in litigation. To accommodate the conflicting values it is imperative to achieve swift resolution of these questions, so as to avoid the waste involved in suspending execution of large projects to which vast public or private resources are committed. . . .

Ways must be found to provide reasonable compensation for injuries resulting from negligence of hospitals and doctors, without the distortion in the cost of medical and hospital care witnessed in the past few years. This is a high priority.

Ways must be found to compensate people for injuries from negligence of others without having the process take years to complete and

consume up to half the damages awarded. The workmen's compensation statutes may be a useful guide in developing new processes and essential standards.

It is time to explore new ways to deal with such family problems as marriage, child custody and adoptions. We must see whether it is feasible to have relationships of such intimacy and sensitivity dealt with outside the formality and potential traumatic atmosphere of courts.

One of the innovations of the past half century was the development of modernized and simplified rules of civil procedure. Increasingly in the past 20 years, however, responsible lawyers have pointed to abuses of the pretrial processes in civil cases. The complaint is that misuse of pretrial procedures means that "the case must be tried twice." . . .

Ever since Magna Carta, common law lawyers have recognized that the law is a generative mechanism sharing with Nature the capacity for growth and adaptation. . . . change is a fundamental law of life and even our dedication to stability and continuity must yield to that immutable law. ■■

## CORRECTION

In the March issue of *The Third Branch* we incorrectly listed the Board Agencies and the Probation Agencies which have been chosen to serve as demonstration districts for pretrial services specified by the Speedy Trial Act. Here is a correct list of the districts:

### Board Agencies

Maryland-Baltimore  
Eastern Michigan-Detroit  
Western Missouri-Kansas City  
Eastern New York-Brooklyn  
Eastern PA-Philadelphia

### Probation Agencies

Central Calif.-Los Angeles  
Northern Georgia-Atlanta  
Northern Illinois-Chicago  
Southern New York-NYC  
Northern Texas-Dallas



# PERS<sup>ONNEL</sup>

# GO<sup>OOD</sup>FC calendar

## Elevation

Robert F. Peckham, Chief Judge,  
District Court, N.D. Calif., Apr. 7

## Confirmations

Gerald L. Geottel, U.S. District  
Judge, S.D. N.Y., Mar. 26

Charles S. Haight, Jr., U.S. District  
Judge, S.D. N.Y., Mar. 26

John M. Manos, U.S. District Judge,  
N.D. Ohio, Mar. 26

## Nominations

Charles Schwartz, Jr., U.S. District  
Judge, E.D. La., Mar. 23

Morey L. Sear, U.S. District Judge,  
E.D. La., Mar. 23

William B. Poff, U.S. District Judge,  
W.D. Va., Apr. 1

George C. Pratt, U.S. District  
Judge, E.D. New York, Apr. 13

Ross N. Sterling, U.S. District  
Judge, S.D. Texas, Apr. 13

Harlington Wood, Jr., U.S. Circuit  
Judge, Sixth Circuit, Apr. 14

Robert M. Takasugi, U.S. District  
Judge, Central District of California,  
Apr. 14

## Deaths

Frank Le Blond Kloeb, U.S. Senior  
District Judge, N.D. Ohio, Mar. 11

Thomas M. Madden, U.S. Senior  
District Judge, D.N.J., Mar. 29

William E. Miller, U. S. Circuit  
Judge, Sixth Circuit, Apr. 12

William H. Hastie, U.S. Circuit  
Judge, Third Circuit, Apr. 14

May 4-7 Instructional Technology  
Workshop for Probation Training  
Officers, Memphis, Tenn.

May 10-12 Seventh Circuit Judicial  
Conference, French Lick Ind.

May 11 Workshop for District  
Judges (Sixth Circuit), Columbus,  
Ohio

May 12-14 Management Program  
for Probation Supervisors,  
Hartford, Conn.

May 12-15 Sixth Circuit Judicial  
Conference, Columbus, Ohio

May 17 Judicial Conference Advisory  
Committee on Civil  
Rules, Washington, D.C.

May 17-20 Orientation Seminar for  
Magistrates, Washington, D.C.

May 19-21 Seminar for Fiscal  
Clerks, Atlanta, Georgia

May 24-27 Fifth Circuit Judicial  
Conference, Houston, Texas

May 24-28 Orientation Seminar for  
Probation Officers, Dallas,  
Texas

May 27-29 District of Columbia  
Circuit Conference, Hershey,  
Pennsylvania

May 28-29 Judicial Conference  
Subcommittee on Judicial  
Statistics, San Francisco,  
Calif.

June 2-4 Seminar for Bankruptcy  
Chief Clerks, Pittsburgh, Pa.

June 7-10 Crisis Intervention Workshop  
for Probation Officers,

San Francisco, Calif.

June 14-19 Newly-appointed Bankruptcy  
Judges, Washington,  
D.C.

June 30-July 1 Workshop for District  
Judges (8th and 10th  
Circuits), Hot Springs, Ark.

## SENATE APPROVES FORTY-FIVE DISTRICT JUDGESHIPS

By a vote of 87 to 1 the Senate,  
April 1, approved the creation of 44  
permanent district judgeships and  
the change of one judgeship from  
temporary to permanent in the  
Middle District of Pennsylvania.

Districts in which the new judgeships  
will be located if the House  
approves are listed in the Sept. 1975  
*Third Branch*. Prior to the vote, the  
Senate defeated several amendments  
which, in effect, would have  
removed local school districts from  
the jurisdiction of federal district  
courts. *171*

## EQUAL ACCESS TO COURTS RECEIVES STRONG SUPPORT

The Equal Access To Courts Act,  
S.2871, received additional support  
in the Senate on March 29 when  
Senator Barry Goldwater voiced his  
strong support for the Bill which  
was introduced by Senator Buckley  
earlier this session.

Senator Goldwater said the Bill is  
designed to allow private parties  
and businesses who prevail in civil  
litigation against the U.S. to  
receive their full legal costs, including  
reasonable attorney's fees. *171*

## THE THIRD BRANCH

VOL. 8, NO. 4

APRIL 1976

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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MAY 1976

## The Criminal Justice Act— Ten Years Later

On August 20, 1975, the federal courts of the nation completed ten years of operation under the terms of the Criminal Justice Act of 1964, as amended. During that period of time counsel was provided for 390,858 defendants in the federal courts at a cost of 84 million dollars to the nation. A defendant for whom counsel is appointed by a federal magistrate or judge is represented at every stage of the proceedings from his initial appearance to the final disposition of the case.

The test to be applied in appointing counsel for a defendant is not indigency but rather financial inability to obtain an adequate defense.

In addition to counsel, the Act provides for investigative, expert and other services and the furnishing of transcripts, which has now become the single most expensive item furnished under the Act.

A bill enacted on October 14, 1970 empowered federal courts to establish defender organizations. These could be either a federal public defender, organizationally modeled in the broadest sense on the United States attorneys' offices, or community defender organizations operated by a nonprofit group recognized by the court and financed through grants approved by the Judicial Conference of the United States.

From the effective date of the amended Act in February 1971 until the present, twenty-two federal public defender offices have been

established. The Act requires that all district plans, including those which provide for a defender organization, shall include provision for private attorneys in a substantial proportion of cases. The Judicial Conference by regulation has thus required that in those districts having defender organizations, private counsel shall be assigned in at least 25 percent of the cases yearly.

(See CJA page 2)

### Special Notice:

#### MEETINGS FOR DISTRICT AND CIRCUIT JUDGES SCHEDULED

FJC Director, Walter E. Hoffman, this month announced significant dates of special interest to the federal judges:

- The next Seminar for Newly Appointed District Judges will be held in Washington, D.C., September 13-18.

- The next Conference for Judges of the United States Courts of Appeals will be held in Phoenix, Arizona, October 27-30.

## JUDICIAL FELLOWS SELECTED

The Commission on Judicial Fellows whose Chairman is Mr. Justice Clark (U.S. Supreme Court, retired), has selected three Judicial Fellows for the 1976-77 year.

They are Thomas E. Baynes, Jr. of Fort Lauderdale, Florida, Associate Professor of Law and Public Administration at Nova University; Larry C. Farmer, Research Associate and Instructor at Brigham Young University School of Law; and Jeffrey B. Morris, Special Assistant to the Executive Vice President for Academic Affairs and Provost of Columbia University.

Mr. Baynes received his undergraduate degree from the University of Georgia in Economics and three degrees in law from Emory and Yale universities.

Before accepting his position at the Nova University Law Center, he was the Acting Regional Director of the National Center for State Courts in Atlanta, Georgia, where he supervised and participated in state court systems evaluations and technical assistance projects. He

Prior to this, he was Assistant Dean of the School of Business at Georgia State University's School of Business and also served on its Faculty of Urban Life. He has published monographs and articles on state court operations and other legal matters.

Mr. Farmer received his Bachelor of Science Degree in Psychology

(See FELLOWS page 3)



(CJA from page 1)

To establish a defender organization, the Act requires that at least two hundred persons in the district annually require assignment of counsel. Although the statute permits two adjacent districts or parts of districts to aggregate the number of persons represented, no district or portion thereof has as yet used this proviso.

Each federal public defender's budget, monthly statistical reports and annual report are submitted to the Administrative Office. Upon approval by the Judicial Conference, the Administrative Office in turn submits a budget for each federal public defender office to the Congress.

Community defender organizations are private, non-profit defense counsel services. The statute permits both an initial grant and a sustaining grant to these organizations. To date, eight such organizations have operated under grants approved by the Judicial Conference of the United States on recommendation of its Committee to Implement the Criminal Justice Act. These organizations also file monthly statistical reports and an annual report, as well as an auditor's report, with the Administrative Office.

Four of the defender organizations developed from existing units which had been operating on private grants. The defender offices vary in size, depending on the caseload. For appropriations purposes it is estimated that an assistant defender handles between 100 and 125 cases a year. The head of the office, depending on the size of his staff and his administrative responsibilities, will handle no more and probably substantially less than half of a caseload. The largest single office is at Los Angeles which has sixteen authorized assistant federal public defenders. The average cost of representation per case by federal public defenders in 1975, including appeals, was \$360 compared to approximately \$350 per case for services rendered by assigned counsel and \$374 per case for community defenders. During 1975 the federal public defenders

were assigned 10,337, and the community defenders were assigned 4,963.

The Judicial Conference has issued a series of guidelines, recommended by its Committee to Implement the Criminal Justice Act, to assist the courts, assigned counsel and federal defenders. They remain under continuous review in committee. They expand on the Act and regulate such matters as the determination of eligibility, contents of the district or circuit court plans, use forms of appointment of more than one attorney for a single defendant, proration of claims, travel and other reimbursable expenses. The guidelines also specify which expenses are not reimbursable and situations to which the Act does not apply, as for example, corporate defendants and petty offense cases when the judge or magistrate does not believe there is a likelihood of loss of liberty if convicted.

Counsel furnishing representation under the Criminal Justice Act implementation plan adopted in each district shall, by statute, be selected from a panel of attorneys designated or approved by the court or from a bar association, legal aid agency or defender organization. The districts have not followed a uniform pattern in the selection of the panel. Some panels are composed of a large cross-section of the trial bar, others are composed of a small, carefully selected group of attorneys versed in the criminal and appellate practice. The Judicial Conference has urged frequent examination of the composition of the panel and has urged some rotation of the membership of the panel from time to time. This is designed to assure greater opportunity to the bar for service as well as to prevent concentration on a few attorneys, as has happened in at least one district, contrary to the spirit and intent of the Act.

The task of maintaining the panel has devolved largely on the clerks of court. Some courts, however, have called on the federal defender for assistance. In the Northern District of Illinois, for example, the

federal defender maintains the panel, at the request of the court assures rotation in membership and receives and screens, preliminary for the court, the vouchers submitted by assigned counsel.

This has resulted in relieving both the court and the Clerk's office of many of the added burdens imposed by the operation of the Criminal Justice Act.

The Criminal Justice Act places upon the Administrative Office of the United States Courts the supervision of payments made from the appropriations to implement the Act.

In October 1975, the Administrative Office established the Criminal Justice Act Division naming James E. Macklin, Jr. as its chief. The new CJA Division is concerned entirely with the administration of the Act, including coordinating activities relating to the implementation of the Act, evaluating existing and proposed legislation relating to the Act, responding to requests for the study of existing defender and panel organizations and the need for new defender offices (and, where appropriate, assisting in the establishment of such new offices), and providing staff support for and liaison with the Judicial Conference Committee to Implement the Criminal Justice Act.

The Federal Judicial Center has assisted the federal defender offices by sponsoring an annual seminar for the heads of defender offices. In the fiscal year 1976 the program was expanded to provide workshops for assistant defenders designed to assist them in their daily work. These seminars and workshops have had a fortunate by-product in bringing defender office personnel together in discussions of mutual problems and in the interchange of ideas and methods. From a long range standpoint, they have achieved a working relationship among the offices in the investigative process. Thus they have contributed both to the work of the offices and to achieving a sense of purpose and dedication which has characterized the federal defender offices.



ELLOWS from page 1)

om the University of Washington  
Seattle and his Doctorate in  
Clinical Psychology from Brigham  
Young University. He is one of the  
few clinical psychologists teaching  
at a law school. In a pioneering  
project, funded by the National  
Science Foundation, he examined  
negotiating techniques used by  
attorneys in resolving civil disputes.

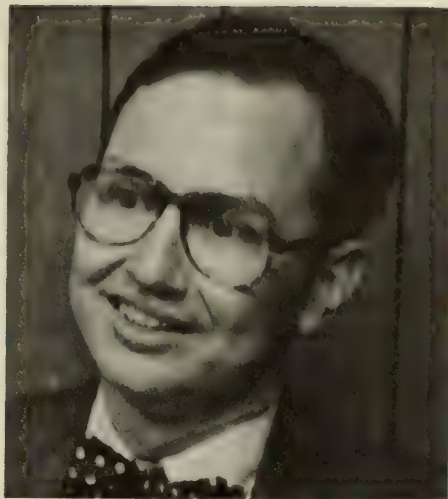
Among his publications are "Ju-  
r Perceptions of Trial Testimony  
as a Function of the Method of  
Presentation" and "Jurors' Verdicts  
and Evaluations as a Function of  
Deotape and Transcript Methods  
Presenting Trial Testimony."

Mr. Morris is a 1962 graduate of  
Princeton University where he  
majored in International Relations  
at the Woodrow Wilson School of  
Public and International Affairs. He  
received his law degree in 1965  
from Columbia University Law  
School and his Ph.D. in 1972 from  
Columbia University where he  
concentrated on American Govern-  
ment and Public Law. His disserta-  
tion subject was *The Second Most  
Important Court, The United States  
Court of Appeals for the District of  
Columbia Circuit*.

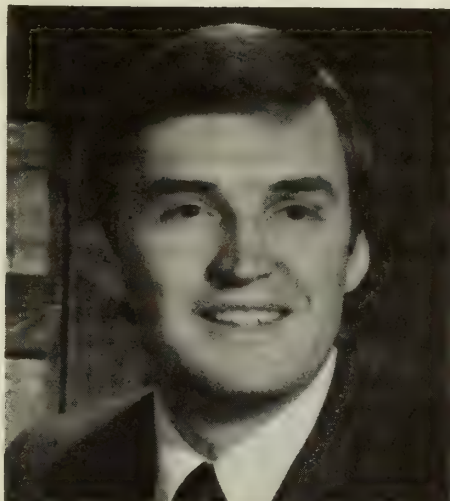
Professor Morris was Associate  
Editor of the revised Encyclopedia  
of the American History (Harper &  
Row, 1975) and has published  
numerous articles.

Before his current appointment  
as a Special Assistant to the  
Executive Vice President of Colum-  
bia University, he was an Assistant  
Professor in the Political Science  
Department of the City College of  
New York University of New York.

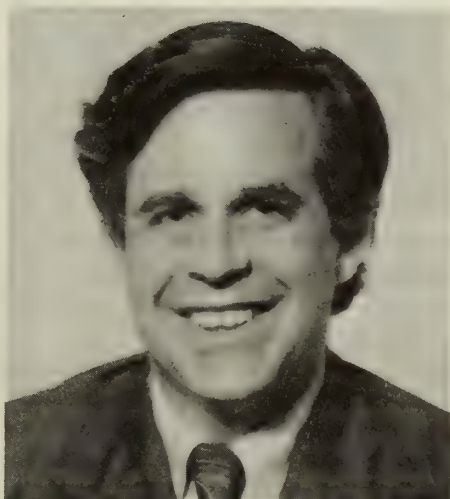
This is the fourth group of  
Judicial Fellows to be selected  
since the program began in 1971.  
The program continues to have  
appeal to a wide-ranging group of  
distinguished applicants with va-  
ried disciplinary backgrounds rele-  
vant to the work of the courts.



Thomas E. Baynes, Jr.



Larry C. Farmer



Jeffrey B. Morris

## FEDERAL, STATE JUDGES DISCUSS LAW IN THE THIRD CENTURY

State and federal judges joined  
law professors at New York Uni-  
versity this month to discuss what  
trends our system of law will follow  
during the next century. The con-  
ference was a part of a Bicentennial  
program sponsored by the Univer-  
sity's Law School.

Here are some of the comments  
of the federal judges:

- The civil liberties trend will be  
to require that government not only  
specify what cannot be done to its  
citizens but, even more important,  
what government *must* do for its  
citizens to guarantee that their civil  
liberties are protected. [Chief  
Judge David L. Bazelon (CA-DC)]

- The courts can, and have,  
ordered racial integration in this  
country but the future will show  
that the courts cannot through  
blanket orders erase fear and urban  
blight, and abolish unemployment,  
inadequate medical care and pov-  
erty. [Judge A. Leon Higginbotham,  
Jr. (CA-3)]

- When 90% of civil cases and  
almost 90% of criminal cases in the  
federal courts are terminated short  
of trial, it gives cause to ponder  
whether some civil litigants and  
some criminal defendants are really  
sacrificing their legal rights be-  
cause they are coerced into settle-  
ments by an awareness of exces-  
sive costs and unreasonable delays.  
Rather than see this trend continue,  
steps should be taken to assure that  
in the future disputes will be re-  
solved faster and at less cost by  
increasing the courts' efficiency,  
streamlining the entire process and  
by diverting certain classes of  
disputes from the courts. [Chief  
Judge Irving R. Kaufman (CA-2)]

- In looking to the relationship of  
the courts to our society in the third  
century consideration should be  
given to restructuring our legal  
system to avoid the imposition of  
inordinate expense and delay.  
Methods should be developed more  
easily to resolve matters such as  
probate, home financing, and fam-  
ily law. [Warren E. Burger, Chief  
Justice of the United States.]



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

The Senate has passed, without amendments, and sent to the House, two bills—S. 2412, to provide for the holding of terms of court for the Northern District of Mississippi, Eastern Division, at Aberdeen, Ackerman, and Corinth; and S. 2887, to include Bottineau, McHenry, Pierce, Sheridan, and Wells Counties in the Northwestern Division of the District of North Dakota.

The Senate Committee on Post Office and Civil Service has favorably reported H.R. 11438, which grants court leave to federal employees when called as witnesses in certain judicial proceedings.

**S. 12.** The Judicial Survivors Annuity Program Amendments bill is pending before the Senate.

**S. 2715.** This bill would permit awards of reasonable attorney's fees and other expenses for participating in proceedings before federal agencies (and in subsequent litigation) has been favorably reported by the Senate Judiciary Committee. The bill would authorize appropriations to the Administrative Office of the U.S. Courts to pay such fees and expenses ordered by the courts.

The Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee has opened hearings on S. 2762, the bill to establish a National Court of Appeals.

On May 6 the Senate Judiciary Committee reported favorably, with amendments, S. 1284, the Antitrust Improvements Act of 1976. It would authorize, *inter alia*, state attorneys general to bring private treble damage actions to secure redress for damage done to their citizens.

The House Judiciary Committee has favorably reported H.R. 11193, the Gun Control amendments.

## JUDICIAL CONFERENCE RULES ON PART-TIME MAGISTRATES' ACTIVITIES

At its April 7th session the Judicial Conference adopted the following statement of policy concerning special master references to part-time magistrates:

That a part-time magistrate is precluded from accepting fees, in addition to the salary set for his position by the Conference, for services performed as a special master, whether or not such service is rendered in the magistrate's official capacity, and further, that no fees should be taxed against the litigants for such service.

It should be noted that the prohibition against the taxing of fees against the litigants applies only to payment for the services performed by the part-time magistrate, and not to other necessary costs incident to the reference. ■■

## CA-6 HAS OPENING FOR SENIOR STAFF ATTORNEY

The United States Court of Appeals for the Sixth Circuit announces the creation of the position of Senior Staff Attorney at the Court headquarters in Cincinnati. The Senior Staff Attorney will provide legal assistance to the Court, participate in the analysis of the cases and motions before the Court and supervise the other staff attorneys. Desired qualifications include six years legal and administrative experience. Salary is up to \$31,500, depending on qualifications. Inquiries and resumes may be submitted to James A. Higgins, Circuit Executive, 303 USPO & Courthouse, Cincinnati, Ohio 45202.

## CA-3 SEEKS PROGRAM ANALYST

The U.S. Court of Appeals for the Third Circuit is seeking applications for the position of Circuit Program Analyst. This individual will perform under the administrative supervision of the Clerk of Court but also will report directly to the Chief Judge and/or the Circuit

Executive for selected analyses and studies.

Compensation will be based on qualifications and will range from \$8,925 to \$13,482. The position has the potential for future advancement to higher grades. Resumes and all requests for application forms should be directed to William A. Doyle, Circuit Executive, 20716 United States Courthouse, Independence Mall West, Philadelphia, Pa. 19106. Closing date for applications is June 30, 1976. ■■

## CHIEF JUDGE SEITZ APPOINTS CA-3 LAWYER ADVISORY COMMITTEE

Fifteen lawyers who practice in the Third Circuit have been appointed by Chief Judge Collins Seitz to a Lawyers Advisory Committee. The function of the committee is twofold:

- To study and make recommendations to the Court on matters transmitted to the committee by the U.S. Court of Appeals for the Third Circuit.

- To send the Court *ab initio* recommendations on any matter touching on judicial administration which the committee deems appropriate for the Court to consider.

In a letter appointing counsel to the committee, Chief Judge Seitz advised them that the Court was hopeful that the committee would serve as a vehicle to explore the reaction of a cross section of the legal profession and "to constitute a voice to communicate concern to the Court."

## A. O. INSTALLS MINI-COMPUTER FILE MANAGEMENT SYSTEM

On March 2, the Administrative Office began operation of a System 5000 File Management System leased from INFOREX, Inc. The mini-computer system, which requires no programming, enables the Administrative Office to have a new computer system operating approximately two months from the time that the initial speedy tri reporting requirements were defined in detail.

The System 5000 will be used



primarily to collect data required under Titles I and II of the Speedy Trial Act of 1974. All criminal and probation records are on-line available to the data analysts for inquiry, updating, and processing.

Through daily transaction tapes, selected data is passed from the System 5000 to the A.O.'s IBM 370 for extensive speedy trial reporting preparation and analysis. The Criminal/Probation master file on the new mini-computer is expected to grow to nearly 200,000 records by the end of the current fiscal year. The INFOREX equipment will also be utilized for capturing and updating Pretrial Services Interview Data. An important advantage of the system is its flexibility. The INFOREX 5000 will be able to easily accommodate data element changes and output report changes for both the Speedy Trial and Pretrial Services systems. In addition, records will be accessible for constant, real time inquiry. ■■

## STATE-FEDERAL

The Federal Judicial Center endeavors to keep abreast of all activities of the State-Federal Judicial Councils. It would assist Center personnel in responding to requests for information on Council work if reports could be received on meetings, subjects discussed and how the Councils function.

The following is a report on some Council activities received since the last column was published in *The Third Branch*.

**Indiana.** At the St. Paul Conference on the "Causes of Popular Dissatisfaction With The Administration Of Justice" last month, Chief Justice Richard M. Givan of Indiana reported that his state has a Commission on Competency of the Bar. Serving on the Commission are three lawyers and three appellate court judges, one judge from the Supreme Court of Indiana and three from the federal courts. Conferees later commented this was appropriate for consideration at meetings of State-Federal Judicial Councils.

**Virginia.** At the last meeting of the Virginia State-Federal Judicial Council, the members discussed the federal Speedy Trial Act of 1974. They concluded it was too early to distinguish state and federal problem areas but that it would be on the agenda for future meetings in the event problems surface. Circuit Executive Samuel Phillips reported that state court personnel had attended a federally-sponsored seminar on management and cited it as a splendid example of state-federal cooperation. Other subjects discussed were a certification system for federal questions to state courts and the possibility of swearing in new Virginia lawyers at naturalization ceremonies to be held in Charlottesville next July.

**Michigan.** Chief Justice Thomas G. Kavanagh, in his "State of the Judiciary" report to the joint session of the Michigan Legislature in March pointed with pride to significant improvements. But the Chief Justice also pointed out problem areas, one of which was: "Federal funds to law enforcement agencies and the increased effectiveness of those agencies have resulted in greater numbers of people being brought into the courts. The effect on the courts is severe."

**New Jersey.** Chief Justice Richard J. Hughes of the New Jersey Supreme Court and Chief Judge Lawrence A. Whipple of the U.S. District Court met recently to avert a controversy over attorney disciplinary procedures in the state and federal courts in New Jersey. Justice Worrall Mountain, who also attended the meeting, later said, "I do think . . . that the public interest would be better served if . . . the state and federal courts [would] impose the same discipline. I find no affront to either sovereignty by this approach." Chief Judge Collins Seitz (CA-3) addressed the New Jersey Bar Association in March on this subject and a copy of his speech is available from the FJC Information Service.

**South Carolina.** Deputy Attorney General Harold R. Tyler, Jr., former federal judge and member of the FJC Board, presented a Law Day

address at the annual South Carolina Bar Association. Also featured at the Association's meeting was a dinner honoring state and federal judges. ■■

### COURTRAN II STARTS PILOT OPERATION

The Center has installed 38 COURTRAN terminals in six district courts and one court of appeals. These terminals are linked through telecommunication lines to a COURTRAN computer located in the U.S. District Court for the District of Columbia and give each pilot court all the capability of a large computer without the accompanying headaches. The pilot courts are now creating initial files—called *data bases* in computer jargon—which will be the basis for providing full docket information within several months for criminal cases, and in the Fall for civil cases. Work is also proceeding on development of a system for appellate courts.

Additional terminals are on order, but installation will not be made in other courts until sufficient experience and program "debugging" is achieved via pilot court operation. It is anticipated that terminals will be provided for approximately thirty districts during calendar year 1977. The six pilot districts are Central District of California, Northern District of California, District of Columbia, Northern District of Illinois, Eastern District of Michigan and Southern District of New York.

### The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



## ADMINISTRATIVE OFFICE RELEASES ANNUAL WIRETAPPING REPORT

Earlier this month the Administrative Office issued its annual report on applications for orders authorizing or approving the interception of wire or oral communications for the period January 1 to December 31, 1975.

According to the report, 704 applications for orders were made to state and federal judges and three of these applications were denied by state judges, one each in Connecticut, Maryland and New York. Of the 701 applications granted, 108 were granted by federal judges and 593 by state judges.

There were 192 orders authorized by state judges in New York in 1975 compared to 305 in 1974, a decline of 37%. In New Jersey, state judges signed 196 orders which account for 33% of all state orders signed. Interceptions authorized and approved in the states of Florida, Maryland, New Jersey and New York represented 84% of all wiretap authorizations during 1975.

There was a 4% decrease in the total number of wiretap orders authorized, 728 in 1974 compared to 701 in 1975. Federal orders declined by 11% from 121 in 1974 to 108 in 1975 while state authorizations decreased by 2% from 607 in 1974 to 593 in 1975.

There were 408 authorizations, comprising 58% of the total, where gambling was the most serious offense. In 178 authorizations, drug offenses were under investigation while 16 applications specified homicide or assault as the major offenses.

The highest reported cost for a federal wiretap was \$66,879 for a telephone wiretap in the Northern District of California while the highest cost for a state wiretap was \$89,285 for an investigation conducted in New York City. The average cost for the 671 intercept orders for which a cost figure was reported was \$6,970.

During 1975 there were 1,915 arrests and 2,129 convictions reported as a result of authorized wiretaps completed in prior years.

## ADMINISTRATION SUPPORTS FEDERAL SENTENCING COMMISSION; ELIMINATING OF FEDERAL PAROLE SYSTEM

In an address to the Creighton University Law School recently, Deputy Attorney General Harold R. Tyler clearly outlined the position of the Administration regarding the creation of a Federal Sentencing Commission and the abolition of the Federal Parole System.

Sen. Kennedy and Rep. Rodino have introduced legislation which would create a Federal Sentencing Commission and thus the remarks of the Deputy Attorney General are especially significant since they indicate that the Administration supports not only the creation of the Sentencing Commission but the complete abolition of the Federal Parole System.

Deputy Attorney General Tyler said that the sentencing guidelines would satisfy two goals:

"The guidelines would increase the certainty of punishment for categories of offenders and public offenses. Two, the guidelines would eliminate the irrational disparity which many, including myself, believe exists in the present federal criminal justice system."

If a federal district judge imposed a sentence above the so-called guideline sentence the defendant would be able to appeal to a U.S. Court of Appeals while, if the sentence imposed was lower than the guideline sentence the government would have the right to appeal. Former Judge Tyler said judges, among others, may be at least initially opposed to the sentencing idea and said that when he was on the bench he would not have been particularly anxious to have outsiders tell him how to impose sentences.

However, he said, "The interests of candor and fairness in our criminal system, as well as improved deterrence to criminal behavior from more predictable sentencing outweighs any of these concerns that those of us used to the old way of doing things might at first despair."

# Bulletin

A bill delaying the effective date of the proposed amendments to the Federal Rules of Criminal Procedure and the rules relating to Habeas Corpus and §2255 proceedings, H.R. 13899, has been introduced by Congressman Hungate following action by the Subcommittee on Criminal Justice of the House Judiciary Committee. If enacted, this bill would postpone the effective date until August 1, 1977.

## CA-2 HOLDS COURTROOM- CLASSROOM PROGRAM

Five New York City Metropolitan area high schools participated in a one week educational experience recently designed to give the students insight into the judicial process by allowing them access to the same raw materials available to the judges and asking them to prepare a reasoned judicial opinion in the case. They then could compare their "decision" with the actual decision handed down by the court.

Each class was sent copies of the briefs prepared by the attorneys as well as the record of the lower court proceedings. In addition, they received copies of relevant statutes and decisions in the two key cases cited in the briefs. An official of the Court of Appeals Clerk's Office helped prepare two memoranda explaining how the case came to the Court of Appeals and defining the legal issues and terms which might have been difficult to understand.

Following the oral arguments, the students had an opportunity to question at length the attorneys representing both sides. Three weeks later they returned to the Court of Appeals courtroom and discussed their opinions and compared them with the opinion of the Court. The discussion was led by Circuit Executive Robert D. Lipschitz with the assistance of the attorneys who had argued the case.





The following publications are listed for information only. However, those in **boldface** are available from the FJC Information Service.)

• **An Introduction to the Federal Probation System, Federal Judicial Center, 1976.**

• The Judicial Process; Readings, Materials and Cases. Ruggero J. Aldisert. West, 1976.

• A Part-Time Clerkship Program in Federal Courts for Law Students. Jack B. Weinstein and William B. Bonvillian. 68 F.R.D. 265-30 (1976).

• A Report to the Judicial Council on the Language Needs of Non-English Speaking Persons in Relation to the State's Justice System. Phase I Report: Analysis of Language Needs and Problems. Arthur Young & Co., January 1976.

• Sentencing Councils: a Study of Sentence Disparity and its Reduction. Shari Seidman Diamond and Hans Zeisel. 43 U. Chi. L. Rev. 909-49 (Fall 1975).

• Views from the Lower Court: A Trial Judge Swings at Appellate Problems. Alvin B. Rubin. XXIII La. J. 247-61 (March 1976).

• White-Collar Justice; a BNA Special Report on White-Collar Crime. 44 #40 U.S.L.W. (April 13, 1976).

**EDUCATION IN JUDICIAL ADMINISTRATION COMMITTEE MEETS AT FJC**

Dorothy Nelson, Dean of the University of Southern California Law School, and Chairman of the ABA Committee on Education in Judicial Administration, called a meeting recently to continue discussions on how the law schools can best meet their responsibilities to the legal profession. Invited, in addition to committee members, were law professors who were in

Washington attending the annual meeting of the Association of American Law Schools.

Formed in 1973 and cosponsored by the FJC and the American Bar Association, the committee has studied and discussed teaching methods and materials to determine which are the most effective. The AALS, sharing an interest and concern in this area, is represented on the committee by Professors Maurice Rosenberg of Columbia University Law School and Edward Barrett, Jr. of the University of California Law School.

Opening remarks were made by Mr. Justice Clark (Supreme Court, retired) who identified some of the problems of the courts, and how the professors and ultimately their students might assist the judiciary through a better knowledge of how the courts function. The Justice concluded his remarks with the admonition that the professors should be aware of their responsibilities since, "The law schools are the genius of our society."

Professor Maurice Rosenberg addressed the gathering and put forth some provocative thoughts. He questioned the adversary process itself, the best procedure for getting the truth and fair judicial process. The system can work better, he pointed out, if law school graduates understand how the jury system works, how the appellate process operates, and how related tribunals function outside the arena of the courts.

The concluding speaker was Professor Edward Barrett, Jr. He saw as one of the deficiencies of the present legal education system a lack of information on the courts, particularly statistics on the administration of justice. Much of the statistical data, he pointed out, is prepared for primarily budgetary reasons. Law schools, he continued, tend to focus only on the part the judge plays in deciding the case; there is seldom, for example, discussion about legislation—how and why the law being interpreted

became a statute. Professor Barrett feels there is insufficient textual information being used in the law schools on how cases move through the system. He concluded his remarks by saying that students need to be "sensitized" to the issues and problems in judicial administration, including the cost of litigation and the impact a case has on the system when a lawyer files it. A general discussion followed during which these thoughts emerged:

• Law students should have more information on how the judicial system functions from the time the case is discussed with a client until it is finally disposed of.

• Law professors should be more aware of gaps in the education of law students; the end product—the graduate—should be the result of synergistic efforts by all related individuals and institutions.

• Whether a law school is meeting its responsibilities depends on whether the professors combine their teaching to bring about not only a knowledge of law, but a perspective on the whole system, and they should encourage an inquisitive approach to the law which will prompt such questions as: Are present procedures for disposing of cases the best available? Often procedures are followed blindly when better methods could easily be adopted. Should our methods of selecting judges in this country be changed?

• The practice of law is not all syllogistic reasoning; the practical mechanics are a vital part of the process.

• If a question arises as to whether certain types of cases should be handled outside the courts arena, a question should be asked: will this only cause delay and subsequently create a "boomerang" reaction, bringing the issue back to the court? ■■

Query: Are you getting your copy of **The Third Branch** regularly? If you have changed your address, please advise the editor promptly.



# PERSOnNEL

## Appointments

Gerard L. Goettel, U.S. District Judge, S.D.N.Y., April 7  
Charles S. Haight, Jr., U.S. District Judge, S.D.N.Y., May 3  
John M. Manos, U.S. District Judge, N.D. Ohio, April 9

## Confirmations

Harlington Wood, Jr. U.S. Circuit Judge, 7th Cir., May 6  
Phil M. McNagny, Jr., U.S. District Judge, N.D. Ind., May 6  
Charles Schwartz, Jr., U.S. District Judge, E.D. La., May 6  
Morey L. Sear, U.S. District Judge, E.D. La., May 6  
George C. Pratt, U.S. District Judge, E.D.N.Y., May 6  
Ross N. Sterling, U.S. District Judge, S.D. Tex., May 6  
Robert M. Takasugi, U.S. District Judge, C.D. Ca., May 6  
Ralph B. Guy, Jr., U.S. District Judge, E.D. Mich., May 11  
Laughlin E. Waters, U.S. District Judge, C.D. Ca., May 11  
Maurice B. Cohill, Jr., U.S. District Judge, W.D. Pa., May 18

## Nominations

John P. Crowley, U.S. District Judge, N.D. Ill., May 18  
James C. Hill, U.S. Circuit Judge, 5th Cir., May 4  
Richard A. Revell, U.S. District Judge, W.D. Ky., April 26

## Resignations

Richard H. Levet, U.S. Senior District Judge, S.D.N.Y., May 3  
Ralph F. Scalera, U.S. District Judge, W.D. Pa., May 1

## Deaths

Walter A. Gordon, Judge, (resigned) District Court of the Virgin Islands, April 2  
David John Wilson, Senior Judge, U.S. Customs Court, April 23

# ajc calendar

June 11-12 Judicial Conference Appellate Rules Committee, Boulder, Colo.

June 11-12 Judicial Conference Subcommittees on Federal Jurisdiction and Judicial Improvements, Bar Harbor, Me.

June 14-19 Seminar for Newly Appointed Bankruptcy Judges Washington, D.C.

June 23-25 Judicial Conference Criminal Justice Act Committee, Jackson Hole, Wyo.

June 26 Judicial Conference Subcommittee on Supporting Personnel, Hot Springs, Ark.

June 27-30 Fourth Circuit Judicial Conference, White Sulphur Springs, W. Va.

June 27-30 Joint Judicial Conference of the Eighth and Tenth Judicial Circuits, Hot Springs, Ark.

June 30-July 1 Workshop for District Judges (8th & 10th Circuits), Hot Springs, Ark.

July 12 Judicial Conference Bankruptcy Committee, Denver, Colo.

July 12-13 Judicial Conference Probation Committee, Martha's Vineyard, Mass.

July 13-16 Instructional Technology Workshop for Probation Officers, Denver, Colo.

July 15-17 Judicial Conference Committee on Administration of the Criminal Law, San Francisco, Ca.

July 19-20 Judicial Conference Jury Committee, Sun Valley, Ida.

July 25-27 Ninth Circuit Judicial Conference, Spokane, Wash.

July 27-29 Judicial Conference Review Committee, Jackson Hole, Wyo.

July 28-29 Judicial Conference Judicial Activities Committee, Jackson Hole, Wyo.

July 30 Judicial Conference Joint Committee on Code of Judicial Conduct, Jackson Hole Wyo.

Sept. 13-18 Seminar for Newly Appointed District Judges Washington, D.C.

Sept. 26-28 Conference of Metropolitan Chief Judges, New Orleans, La.

Oct. 27-30 Conference for Federal Appellate Judges, Phoenix Ariz.

THE THIRD BRANCH

VOL. 8 NO. 5 MAY 1976

THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

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JUNE 1976

### FIRST REPORT ON DISTRICT COURT STUDIES PROJECT ISSUED

An interim report on the Federal Judicial Center's District Court Studies project was issued this month.

Although several reports on individual courts have been published, this is the first report which summarizes overall findings from the five metropolitan courts studied to date.

The project is designed to obtain a perspective on the factors which determine exactly why some courts are more productive than others.

The following factors primarily distinguished the fast and/or highly productive courts from the others:

1. They have an **automatic** procedure that assures in every civil case that discovery begins quickly, is completed within a reasonable time, and is followed by a prompt trial if necessary. These procedures are automatic because they are invoked at the start of every case, subject only to a small number of exceptions.

Although all of the courts visited have procedures which are designed to accomplish these goals, most do not achieve early and effective control. In slow courts, much of the time during which a typical case is pending, either is unused or is in violation of the time limits set by the Federal Rules of Civil Procedure.

2. They utilized procedures which either minimize or eliminate judge time during the early stages of the case until

discovery is completed. Docket control, contact with attorneys, and most conferences are delegated, generally to the courtroom deputy clerk or a magistrate. The time of the judge is used only when he is absolutely indispensable in resolving preliminary matters, handling dispositive motions, or planning the preparation of an exceptionally complex case.

3. The role of the courts in settlement is minimized. Judges are highly selective in initiating settlement negotiations and normally do so only when a case is ready for trial or almost ready.
4. A minimum of written opinions are prepared and published.
5. All proceedings that do not specifically require that they be held in chambers are held in open court.

During the course of the visits to the five district courts, several judges expressed their concern that efforts to improve the speed and efficiency of the federal district

(See REPORT page 3)

### FJC RESEARCH DIVISION PREPARES REPORT ON LITIGATION PRIORITIES

In response to the request of Judge William C. O'Kelley (N.D. Ga.) who asked the Center for a list of priorities for handling litigation in the trial courts, the Federal Judicial Center's Research Division assembled a compilation of priority directives contained in a wide range of federal laws.

This research was aided by a computerized legal research service which is currently being evaluated by the Federal Judicial Center in several federal courts.

The U.S. Code was searched for sections where the expediting of matters was called for, these citations were examined, and the listing for priorities was developed.

This list was then circulated to the General Counsel of the Administrative Office, the Legal Counsel of the Justice Department and others for comments and additions.

The report, entitled "Priorities for the Handling of Litigation in the United States District Courts", contains 29 Acts and U.S. Code Sections that call for special handling of certain types of cases. A brief discussion of each is included along with the expediting language.

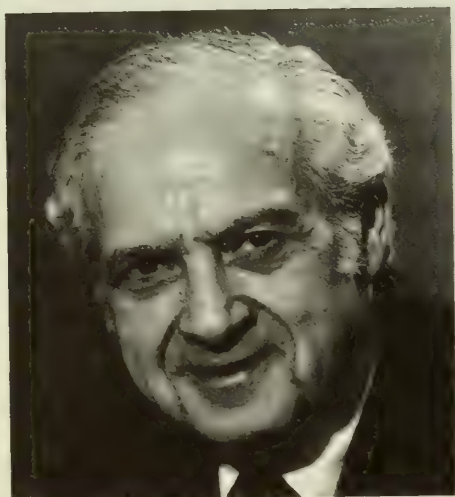
The U.S. Code contains no general rule for the ordering of priority litigation; there are no priorities among the priorities established in the Code.

However, the language of the various provisions appears to in-

(See PRIORITIES page 3)



## Chief Judges Bazelon, Fairchild and Brown Present State of the Circuit Messages



Chief Judge David L. Bazelon (CA-DC)

In his opening remarks to the Judicial Conference for the District of Columbia, Chief Judge David L. Bazelon said that when he joined the court in 1949 there were 390 cases pending and 9 judges on the District of Columbia Court of Appeals. However, at the end of last year there were still only 9 judges on the court, but there were now 1,323 pending cases. In his first year on the court, 434 appeals were docketed while last year there were 1,113 cases docketed.

Chief Judge Bazelon said the judges of the Court of Appeals had hoped that the court reorganization act would provide some relief and perhaps reduce the tremendous caseload on the District Court as well as the Court of Appeals. This has not happened. He recently sent a letter to the Judicial Conference Subcommittee on Judicial Statistics requesting three additional judgeships for his Court.

From 1972-1975 the number of criminal and private civil cases filed in the Court of Appeals has been more than halved. But, during the same period of time, the number of agency cases and civil actions involving the U.S. has almost doubled, so that the total drop in filings was almost negligible.

(See BAZELON page 7)



Chief Judge Thomas E. Fairchild (CA-7)

In his address to the Annual Judicial Conference of the Seventh Circuit, Chief Judge Thomas E. Fairchild emphasized that the District Courts and the Circuit Courts must have additional judges if they are to maintain the quality of justice expected by the public.

The Chief Judge said that while criminal cases have decreased from the previous year, bankruptcies were up by about 5,500 and civil filings by 773, representing a 10 percent increase.

"In view of the requirements of the Speedy Trial Act in criminal cases, it is hard to see where civil cases are going to be disposed of, let alone at a larger number. There are many things which can be done to improve judicial efficiency, but there is a limit to the number of increased case terminations which can be obtained by changes in judicial procedures without appointing new judges to handle the increased filings."

He said that although filings have increased the Seventh Circuit Court of Appeals has not departed from its emphasis on oral argument in almost all cases.

He pointed out that while the Senate has approved the ninth judgeship for the Seventh Circuit

(See FAIRCHILD page 7)



Chief Judge John R. Brown (CA-5)

Chief Judge John R. Brown (CA-5) in his report on the state of the federal judiciary, delivered recently described the tremendous growth in litigation in this large Circuit and outlined ways in which the problem can be attacked. Here are a few of the highlights of his remarks:

- The Judges of the Fifth Circuit have the most work, turn out the most production and have the problems [characteristic] of the whole federal judiciary.

- This workload, disproportionate to the relative population percentages in the nation, includes many types of cases of a demanding time-consuming nature likewise disproportionate on a national basis.

- Despite this ever-increasing almost exponential increase in incoming business, the output of these dedicated hard-working judges has continued to increase even more spectacularly. Were it not so, we would be in a much worse position than we now are.

- The increase in new business, especially in some of the large metropolitan district courts, is not at and will soon exceed the physical capabilities of the judges, no matter how conscientious or vigorous they may be.

(See BROWN page 7)



REPORT from page 1)

courts might lead to diminution of the quality of justice rendered.

Since this possibility is a matter of great concern to the Federal Judicial Center, the Project's researchers attempted to determine as precisely as possible the dangers which the judges envisioned as well as the degree to which undesirable procedures were characteristic of the courts using approaches noted above.

Since it would be almost impossible, if not presumptuous, to evaluate comprehensively the quality of justice in these courts, the researchers addressed this issue narrowly.

(See REPORT page 6)

PRIORITIES from page 1)

icate various degrees of urgencies from which categories can be developed. In addition, the subject matter or type of case may be grouped into useful categories.

For civil cases, the Research Division subdivided the cases into classifications:

1. Cases that are simply to be expedited.

2. Cases that are to be made a preferred cause on the docket or to take precedence over other pending matters.

3. In certain actions, the Attorney General may file a certificate with the court stating that the subject case is of general public importance; such cases are to be handled expeditiously.

This category contains proceedings instituted under the Three Judge Court Act and cases brought under certain civil rights statutes.

For criminal cases, the Research Division listed four items within this category, ranging from the general mandate of Rule 50 to give preference to criminal matters to the specific time requirements called for under the Speedy Trial Act.

While these categorizations are useful for the purposes of the Federal Judicial Center's research, it is not offered as a definitive statement of the ordering of priorities.

The Federal Judicial Center's Research Division in attempting to establish priorities for the handling of litigation in federal district courts found that there are a number of statutes, many of them recently passed by Congress, which call for priority handling of litigation which may arise as a result of the statute. However, Congress did not set any specific priorities among the priority cases and, as a result, it is quite possible that a judge may be faced with a situation in which he has several cases on his docket with identical priority language requiring that they be tried as soon as possible.

It may be that Congress is not completely aware of the numerous laws which it has enacted calling for priority handling of any litigation which should arise as a result of the enactment of a specific law.

(The Federal Judicial Center has exhausted its supply of copies of this research report and, at the present time, comments and suggestions are being solicited from members of the judiciary to whom the report was distributed. A second edition of the report will then be prepared after all of the comments have been received.)

#### NEW LIMITATIONS PLACED ON RECEIPT OF HONORARIUMS

The provisions of the Federal Election Campaign Act of 1974, which restrict federal employees, including federal judges, from receiving what Congress deems excessive honorariums have been significantly altered by the recent amendments to that Act (P.L. 94-283). The prior provision, 18 U.S.C. §616, has been repealed. The new provision, 2 U.S.C. §441i, provides for higher dollar limitations.

The act now bars the receipt of an individual honorarium of more than \$2,000, rather than \$1,000, and bars the receipt of a year's aggregate of honorariums over \$25,000, as opposed to \$15,000. As before, those figures are exclusive of amounts accepted for actual travel and subsistence expenses, but those exclusions include expenses of not only the person, but also his spouse

or aide, excluding amounts paid for agent's fees or commission.

Unlike §616, which provides criminal penalties for violations of the honorarium section, the new honorarium section contains only civil sanctions. There is some doubt as to the application of the Act's civil sanctions to honorariums. It is the informal opinion of David Anderson, an attorney with the Federal Election Commission, that an acceptance of an excessive honorarium is subject to a civil fine of \$5,000, \$10,000 if the violation is knowing and willful.

As previously noted in *The Third Branch* (Vol. 8 No. 2 February 1976), there are some exceptions to the coverage of the restrictions on honorariums. For example, certain royalties, awards, and gifts are outside the coverage of the section, as are stipends, that is payments for services on a continuing basis. The Federal Election Commission's Regulations contain an enumeration of the intended meaning and scope of the section's terms.

#### FJC SUBSTITUTES COMPUTER FOR MAIL DELIVERY

In an unusual application of the Federal Judicial Center's COURT-TRAN system, the initial manuals which explain how to use the computer terminals and build the necessary data bases are now being delivered to the six-pilot district courts directly through the computer system.

By putting the entire text of the user manuals into the system, operators in the six-pilot district courts can receive a complete manual through the computer.

Since these manuals have only recently been developed, they are subject to frequent change. However, now that they are stored in the computer, the Center can make changes to the manuals by merely editing the text on the computer and then notifying the pilot district courts, via a message to their computer terminal that a change

(See DELIVERY page 4)



(DELIVERY from page 3)

has been made. The pilot districts may then have the new version printed at a local terminal and reproduce as many copies as necessary.

By having the manuals in the computer system, the Center will be able to speed the transmission of manual changes and keep the pilot districts current without using mail delivery.

This experimental use of technology to, in effect, substitute a computer network for mail delivery, has significant future potential. For example, information which is now printed and mailed to various members of the federal judiciary could, in the future, be put into the computer and received by the appropriate recipient immediately or whenever he desired. However, recipients who do not wish to receive the information merely need not push the button.

#### HOUSE JUDICIARY SUBCOMMITTEE HOLDS HEARING ON NEW JUDGESHIPS

The House Judiciary Subcommittee on Monopolies and Commercial Law continued hearings June 10 on bills which would create at least 45 additional district judgeships.

The Judgeship Bill, S. 286, passed the Senate last month. (See *The Third Branch*, October 1975.)

The sole witness was American Bar Association President Lawrence E. Walsh who was questioned at length by Congressmen Peter W. Rodino, Jr., Chairman of the House Judiciary Committee, John F. Seiberling, Robert McClory, and Edward Hutchinson for over two hours. Former District Court Judge Walsh submitted his formal remarks for the record and then responded to a wide range of questions from the Congressmen.

"I wonder if we aren't going to reach the point where the answer is not just adding new judges?" Chairman Rodino asked.

President Walsh replied that "the need for these judges is crystal

clear" and asked the committee to put aside political considerations even though it is an election year.

Chairman Rodino said that it might be possible to enact the legislation during the current session following subsequent hearings later this session but make the effective date next January 21. This would allow a great deal of the preliminary judicial selection to be accomplished during the remainder of the summer and fall and give the new Administration [Republican or Democrat] a pool of already pre-selected candidates from which new judges could be nominated.

In his off-the-cuff remarks to the Subcommittee, President Walsh said that federal litigation is expanding considerably and that between 1966 and 1975 there had been a 146% increase in the number of appeals while there had only been a 24% increase in the number of judges on the courts of appeals. District courts had experienced a similar growth in their caseload from 100,000 to 160,000, or a 60% increase, while the number of district judges has only increased 33%.

He said, "The time has gone when there is any question of the quality and diligence of our federal judges."

The growing caseload he attributed, in part, to the problems of increasing population and the trend toward urbanization. In addition, he said the Speedy Trial Act of 1974 has greatly aggravated the need for additional judges. "We have a hard working judiciary [which is now] confronted with an ever-rising workload at a time when judges are grossly underpaid," President Walsh said.

He told the Subcommittee that it was vitally important that the judiciary be staffed by experienced trial lawyers who are between the ages of 40 and 55 because this is the time when they are the most productive and the only way to attract such lawyers to the federal courts is to increase their present compensation.

Three factors now characterize the federal judiciary, he said. These

are mounting caseloads coupled with the disinclination of Congress to increase the number of judges and finally, a loss of morale among judges who are presently in the federal court system.

There are four possible immediate results which may occur if Congress does not act on the Bill to create additional judgeships:

1. Diversity jurisdiction may be reduced.

2. Oral argument which President Walsh said "affects the skills of the profession" may be reduced or eliminated.

3. A serious limitation on the scope and length of discovery by requiring proof of merit may occur.

4. In criminal cases, elimination, or at least an erosion of the exclusionary rule.

He pointed out that, in the future, the bar sees a continuation of not only the proliferation of litigation but a continuous trend toward more complex cases due, in part, to the great expansion of scientific thought and technological advance.

As examples of future cases which involve advanced scientific knowledge, he cited cases involving prenatal injuries and those which may arise from genetic manipulation and artificial weather creation.

He asked the Subcommittee to "deal generously with the statistics because they understate" the problem.

Significantly, however, he said that he recognizes the problems of an election year and asked the Committee to explore the possibility of either some type of bipartisan action on the part of the Senate or, in the alternative, to enact the legislation now and not make it effective until January 20.

"If nothing is done now, it will be a year from now before the first judge comes before the Senate Judiciary Committee," President Walsh said.

Chairman Rodino responded that "We are caught up in an election year, which unfortunately, does not have a way of getting in the way." He asked President Walsh whether the increased use of magistrates



and enlarging their jurisdiction, could help to remedy the problem: should their authority be widened?"

In response, President Walsh said that he hoped their powers could be widened and they could then handle some of the so-called minor disputes as well as continuing to be useful in discovery proceedings.

Chairman Rodino questioned about the additional cost of the new judgeships which President Walsh estimated at over \$100,000 each but added, "I don't think this is a critical concern. The expenditure per capita of the judiciary in the United States is less than that of most European countries. Other countries spend more on their judicial system — we probably spend more on lawyers."

At the conclusion of the hearing Chairman Rodino announced that additional hearings will be held this session and that the full committee will seriously consider the proposal President Walsh that Congress enact the Judgeship Bill this session but postpone the effective date to January 21, 1977.

## **SUPREME COURT DENIES FREE INDIGENT TRANSCRIPTS**

The Supreme Court has rejected the claim that indigent federal prisoners have an automatic right to a free transcript of their criminal trial for possible use in preparing a petition for post conviction relief. In *United States v. MacCollom*, No. 75-1487, decided June 10, 1976, the Supreme Court reversed a decision of the Court of Appeals for the Ninth Circuit granting a transcript at government expense to a prisoner who had not appealed his conviction but subsequently moved for a court order granting him a free transcript.

In announcing the judgment of the Supreme Court, Mr. Justice Rehnquist stated that the statutory requirement of 28 U.S.C. §753(f)—a judicial certification that the proceedings under 28 U.S.C. §2255 are not frivolous and that a transcript is needed to decide the issue

presented—which must be complied with before appropriated funds may be used to pay transcript costs for indigent petitioners in such cases, does not suspend the writ of habeas corpus and is not violative of due process or a denial of equal protection of the laws. He was joined in his opinion by the Chief Justice and Justices Stewart and Powell. Mr. Justice Blackmun in a separate opinion concurred in the judgment.

A petition for certiorari to the Supreme Court in this case had been filed by the Solicitor General at the recommendation of the Administrative Office of the United States Courts [see *The Third Branch*, July 1975 and October 1975]. The Administrative Office took the position that the decision of the Court of Appeals would have caused excessive and unnecessary outlays of Judiciary appropriated funds for transcript expenses and would also have strained the resources of the official court reporters in the United States district courts to cope with increased demands for transcription.

Respondent MacCollom, while serving a federal prison sentence, had originally made his demand for a free transcript to the District Court for the Western District of Washington without first filing any section 2255 petition. Following denial of his motion, he filed a complaint for declaratory and injunctive relief, which the District Court treated as a petition under section 2255 and denied on the merits. The Court of Appeals reversed, holding that he was entitled to a free transcript to assist him.

Mr. Justice Rehnquist said in his plurality opinion that 28 U.S.C. §753 (f) provides the exclusive authority for furnishing a free transcript to a section 2255 petitioner and that no such expenditure of appropriated funds is authorized in the absence of the required certification by a judge of non-frivolity and need. He also stated that this statutory condition placed upon the availability of free transcripts does not suspend the writ of habeas corpus because a transcript

at Government expense is not a necessary concomitant of the writ. His opinion further said that the limitations of section 753(f) raise no due process issues because the due process clause does not establish any right to appeal or to collaterally attack a conviction. It was noted that respondent had voluntarily foregone his right of appeal, at which time he would have been entitled to a free transcript for that purpose. The opinion concluded that the conditions of nonfrivolity and need imposed by Congress through section 753(f) on the availability of free transcripts to collaterally attack a conviction are not arbitrary or unreasonable and comport with fair procedure so as to satisfy requirements of due process.

With respect to the equal protection issue, Mr. Justice Rehnquist wrote that, while the statutory requirements for a free transcript place indigents "in a somewhat less advantageous position than a person of means," the equal protection requirements of the Fifth and Fourteenth Amendments require not absolute equality in treatment but only adequate access for an indigent person to procedures for review. The opinion concludes that, since respondent had waived his right to appeal, "Equal protection does not require the Government to furnish to the indigent a delayed duplicate of a right of appeal with attendant free transcript which it offered in the first instance, even though a criminal defendant of means might well decide to purchase such a transcript . . .".

"We conclude that the fact that a transcript was available had respondent chosen to appeal from his conviction, and remained available on the conditions set forth in §753 to an indigent proceeding under §2255, afforded respondent an adequate opportunity to attack his conviction. To hold otherwise would be to place the indigent defendant in a more favorable position than a similarly situated prisoner of some, but not unlimited,

(See TRANSCRIPT page 7)



(REPORT from page 3)

Lengthy meetings were held with the judges who seemed most concerned about the conflict implied in Rule 1 of the Federal Rules of Civil Procedure which calls for a "just, speedy and inexpensive determination of every action."

The concerns expressed had to do primarily with the latter stages of the case, especially with excessive pressure on the part of judges to rush a case to trial.

The factors listed previously, by contrast, lead to both speed and efficiency in preparing cases for trial and are compatible with last-minute adjustments in calendaring for good cause.

Significantly, the researchers found many of the accepted ideas about what causes the productivity and time differences which exist from court to court and from judge to judge were either wrong or doubtful. Among these were:

- **Isn't the key difference strong case management?** All of the courts visited are characterized by so-called "strong case management" in one form or another. However, the differences lie in the relative effectiveness of alternative forms of case management.
- **Isn't the determinative factor the personality of the individual judges?** Two strong indications to the contrary are the discovery that individual judges' rates of terminations per year correspond more with their own court than with the average for the federal judicial system and the observation that judges who appear to be personally efficient are just as likely to be found sitting on one court as on another. While the personality, skill and attitude of a judge affects his own work greatly, it does not appear that personal differences between judges on a single court are sufficient to explain the variance between the efficiency of one court and that of another.
- **Aren't the so called "fundamental" differences in the local**

**bar a controlling factor?** Of course, the practices of the lawyers who appeared before the courts of the five cities are clearly distinct from each other and these differences have an effect on the efficiency of the court. However, the differences are often not accidental since many courts have changed the practices of their local bar by changing their policies over the years. Other courts could probably do so as well.

- **Isn't the backlog of cases a controlling factor?** If this term is defined as cases in which the litigants are awaiting court action of some kind such as a pre-trial conference, trial or ruling, then none of these five courts was characterized by a heavy backlog at the time the researchers visited them.
- **Isn't it a matter of diligence on the part of the judges?** On the whole, judges in all the courts visited work extremely hard; as do most of the supporting personnel. The researchers observed relatively little variance from one court to another in this respect, and work weeks greatly in excess of 40 hours on the part of judges were routine. While long hours were especially common in certain courts, the differences were not great enough to explain the wide differences in termination rates among the courts.
- **Isn't a comprehensive pre-trial order essential?** In routine cases none of the five courts enforced this requirement.
- **Isn't it best to get the parties in early and often?** The researchers observed that frequent conferences are often a poor use of time.
- **Isn't the time wasted on oral argument an important factor?** The researchers found that oral proceedings are normal in some courts with excellent records.

The study group is using indepth visits to district courts which have been chosen because of the maxi-

mum contrast in their statistical performance. The report is based primarily on visits to metropolitan courts in Maryland, Eastern Pennsylvania, Eastern Louisiana, Central California and Southern Florida.

Extensive discussions with judges and supporting personnel and the observation of a wide variety of proceedings were an integral part of the Project.

The project is one of the first systematic attempts to relate alternative procedures to their statistical results. Like the practice of law generally, the federal court system is highly localized and few lawyers or judges regularly work on matters of daily procedure with their counterparts in other districts.

As a result, many courts assume that presently used procedures are the best way of conducting their routine business.

Although individual judges frequently visit other districts, they rarely have an opportunity to examine the approaches used in these districts in a comprehensive way, or to examine systematically the factors that may lead to statistical differences between their own districts and others.

Indeed, in some courts there are few opportunities for judges to learn in detail the approaches used by other judges of the same court.

The report is designed to identify the practices that appear to be most effective in assuring the speedy disposition of cases (both civil and criminal) as well as a high rate of case termination per judge, without any apparent diminution in the quality of justice rendered.

In summary, the Federal Judicial Center's District Court Studies Project has answered some questions about the relative operation of district courts and raised some new questions.

Hopefully, the findings of the researchers will assist judges and their supporting personnel in the search for the best techniques possible.

(The Report is available from the FJC Information Service. Ask for Report FJC-76-6.)



BAZELON from page 2)

"Indeed, in 1976 we anticipate a record number of total filings. What's much worse, the cases that now make up almost 70 percent of our workload—the U.S. civil and agency cases—tend to be the most difficult, whether measured by size of the records and briefs, intricacy of the legal issues, or length of time required to dispose of them."

Turning to the District Court for the District of Columbia, Judge Bazelon said the picture is less grim but nevertheless not encouraging. While the total number of cases filed in the District Court has declined markedly since 1972—from 5,654 to under 3,000, but just as the court of appeals is experiencing, the district court is also finding it is confronted with cases of increasing complexity.

FAIRCHILD from page 6)

Court of Appeals, the House has not yet acted on the bill.

Additionally, he told the Conference that the Rule Review Committee is nearing completion of a final draft which should take effect soon.

"The *Report of the Committee to Study Federal Judicial Districts in Illinois* has just been completed and merits particular attention from the Bar. The majority report calls for redistricting of the State of Illinois to four districts, a metropolitan district in the northeast, and three others with district lines running east and west across the state."

He pointed out that Circuit Judge John S. Hastings in a recent law review article had outlined the seventh Circuit's plan for the publication of opinions which is a continuing experiment.

"Under the publication plan, about half of our decisions last year were by unreported orders, which are not citable as a precedent in the seventh Circuit. It is the non-citation element of the rule which is the most controversial. The Subcommittee on Federal Jurisdiction of the Committee on Court Administration of the Judicial Conference

of the United States just requested that the publication plans of each circuit be discussed by the Bar."

In conclusion, he said that he wished to emphasize that the federal court system desperately needed a significant increase in the number of judges.

"There can be a degree of improvement in efficiency, of course, but it is unreal to pretend that the same number of judges can materially increase output without sacrifice of quality. If the federal courts are to maintain the quality standard people expect of them, there simply have to be more judges."

(BROWN from page 2)

- Civil rights (and prisoner) cases with class action aspects present almost unmanageable challenges.

- The preemptive timetable demands of the Speedy Trial Act are disruptive.

- The day is soon at hand when no, or few, traditional civil cases will ever be heard.

- In the Court of Appeals a serious, continuing backlog has developed; priority cases will shortly crowd out or postpone for years nonpreference cases to be orally argued.

Help is needed. The help has to come in a number of ways; from judges through imaginative innovations in judicial actions; by improved relationships with Congress, the media, the bar and by Congressional action to provide additional judgeships as well as the creation and funding for additional supporting personnel, magistrates, clerks, paralegals and court executives.

- By the Bar, by increased participation in the problems of the courts and increased competence on the part of the Bar in improving lawyers' capacity in the indispensable role of advocates for litigants.

"Important as we might think the Court of Appeals is, an analysis of where we have been, what we are doing, and where we are going—indeed, if we are going—has to start with the District Courts which are the origin of all of our mutual problems."

(TRANSCRIPT from page 5)

means, who presumably would make an evaluation much like that prescribed in §753(f) before he spent his own funds for a transcript."

Mr. Justice Stevens, in a dissenting opinion joined by three other justices, urged that a free transcript should have been provided in these circumstances because the criteria of section 753(f) contain no standards for fair administration by district judges and because a rational decision on the questions of frivolity and need in the post conviction proceeding is impossible without first seeing a transcript of the original trial. Mr. Justice Brennan in a separate dissent wrote that the denial of a free transcript to an indigent petitioner under section 2255 is a denial of equal protection because such a transcript would be available for purchase by a petitioner with sufficient funds.

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

**Federal Rules of Criminal Procedure—Amendments** H.R. 13899, a clean bill which will delay the effective date of the proposed amendments to the Federal Rules of Criminal Procedure and rules dealing with habeas corpus and §2255 until August 1, 1977, passed the House on June 7, 1976.

**Court Leave** The President has signed H.R. 11438, which will amend Title 5 U.S.C. to grant court leave to federal employees called as witnesses by any party in proceedings where the United States, District of Columbia, or any state is a party.

**National Court of Appeals** The Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary has

(See LEGISLATION page 8)



# PERSONNEL

# GO FJC calendar

## Appointments

Phil M. McNaghy, Jr., U.S. District Judge, N.D. Ind., May 29  
George C. Pratt, U.S. District Judge, E.D.N.Y., May 24  
Morey L. Sear, U.S. District Judge, E.D.La., May 12  
Ross N. Sterling, U.S. District Judge, S.D. Texas, May 18  
Harlington Wood, Jr., U.S. Circuit Judge, 7th Cir., May 28

## Confirmation

James C. Hill, U.S. Circuit Judge, 5th Cir., May 19  
John P. Crowley, U.S. District Judge, N.D. Ill., June 16  
Mary Anne Richey, U.S. District Judge, D.Ariz., June 16

## Nominations

William A. Ingram, U.S. District Judge, N.D. Calif., June 2  
William W. Schwarzer, U.S. District Judge, N.D. Calif., June 2  
Elizabeth A. Kovachevich, U.S. District Judge, M.D. Fla., June 11  
Peter T. Fay, U.S. Circuit Judge (CA-5), June 14  
Edwin R. Bethune, Jr., U.S. District Judge, E & W Dist. Ark., June 15  
Cecil F. Poole, U.S. District Judge, N.D. Calif., June 18.

## Withdrawal of Nomination

William B. Poff, U.S. District Judge, W.D. Va., June 7

## Death

Oliver J. Carter, U.S. District Judge, N.D. Calif., June 14

July 12 Judicial Conference Bankruptcy Committee, Denver, Colo.

July 12-13 Judicial Conference Probation Committee, Martha's Vineyard, Mass.

July 13-16 Instructional Technology Workshop for Probation Officers, Denver, Colo.

July 15-17 Judicial Conference Committee on Administration of the Criminal Law, San Francisco, Calif.

July 19-20 Judicial Conference Jury Committee, San Valley, Idaho

**July 25-27 Ninth Circuit Judicial Conference, Spokane, Wash.**

July 26-27 Criminal Justice Records Seminar, Atlanta, Ga.

July 26-30 Orientation Seminar for Probation Officers, Cincinnati, Ohio

July 27-29 Judicial Conference Review Committee, Jackson Hole, Wyo.

July 28-29 Judicial Conference Judicial Activities Committee, Jackson Hole, Wyo.

July 29-30 Criminal Justice Records Seminar, Atlanta, Ga.

July 30 Judicial Conference Joint Committee on Code of Judicial Conduct, Jackson Hole, Wyo.

**Sept. 9-11 Second Cir. Judicial Conference, Buck Hill Falls, Pa.**

(LEGISLATION from page 7)

held a series of hearings on S.2762 which would establish a National Court of Appeals.

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings on S. 1130 to prohibit services as a chief judge of any U.S. district court judge over 70 years of age.

**S. 12**, the Judicial Survivors Annuity Act Amendments remains pending on the Senate calendar. However, the House Subcommittee on Courts, Civil Liberties and the Administration of Justice of the Judiciary Committee has held a hearing on H.R. 11320, as well as S. 12. Judge Oren Harris testified at the hearing. That same subcommittee has also held hearings on H.R. 8472 and S. 14, which concern cost of living adjustments for territorial judges and hearings on H.R. 10574 regarding providing accommodations for judges of the courts of appeals.

**S. 495**, the Watergate Reorganization and Reform Act of 1976 would require financial disclosure by all justices and judges of the United States and federal employees at grade 16 and above. The bill has been reported to the Senate.

**The Antitrust Improvements Act of 1976**, S. 1284, is currently being debated on the floor of the Senate.

## THE THIRD BRANCH

VOL. 8, NO. 6 JUNE 1976

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### JUDGES GODBOLD, McGARR NAMED TO FJC BOARD

### SPEEDY TRIAL ACT TIME LIMITS TAKE EFFECT

The Judicial Conference of the United States has selected Judges John Godbold (CA-5) and Frank J. McGarr (N.D. Ill.) to fill two vacancies on the Federal Judicial Center's Board.

Judge Godbold is replacing Judge Griffin B. Bell who recently resigned from the Fifth Circuit Court of Appeals to enter private practice and Judge McGarr is filling the vacancy created by Chief Judge Alfred A. Arraj (Dist. Colo.) who has taken Senior status.

Judge Godbold is a native of Alabama and received his Bachelor of Science Degree in 1940 from Auburn University. After wavering between law and journalism, he decided to become a lawyer and entered Harvard Law School in 1940, but was called into service as Reserve Officer in 1941.

During duty in Europe as an Artillery and Infantry Officer, he rose to the rank of Major before the end of the war. After World War II, he taught mathematics for a year at Auburn and then returned to

Harvard Law School to obtain his J.D. Degree in 1948.

Following graduation, he entered private practice in Montgomery, Alabama. He was appointed to the Fifth Circuit Court of Appeals in July 1966.

Judge McGarr is a native of Chicago and he obtained his Bachelor of Arts in Philosophy from Loyola University in 1942 and his J.D. from Loyola University Law School in 1950.

(See FJC page 2)



Judge John C. Godbold



Judge Frank J. McGarr

Transitional time limits under the Speedy Trial Act became effective July 1, 1976. The time limits govern the period within which an indictment or information must be obtained after arrest or service of summons, the period within which arraignment must be held, and the period within which trial must commence. They apply to all criminal cases in the federal courts except those involving petty offenses.

"Interim" time limits, applicable only to defendants in custody and those designated as "high risk," became effective last September 29.

For the year beginning July 1, 1976, the maximum time limits under the statute are 60 days to indictment or information, 10 days to arraignment, and 180 days to trial. These times will be reduced annually until they become 30, 10, and 60 days on July 1, 1979. In the plans adopted by district courts to implement the Act, however, many districts have made the 1979 time limits applicable to the current year. A preliminary count indicates that this has been done by approximately a fifth of the districts.

The dismissal remedy for failure to meet the time limits does not become effective until July 1, 1979.





(FJC from page 1)

During World War II he served as an Executive Officer on a destroyer with the Pacific Fleet. Following World War II he returned to Loyola University for two years and was an instructor in English and Public Speaking as well as Administrative Assistant to the President of the University.

After two years of private practice he was appointed Assistant United States Attorney and was first Assistant United States Attorney from 1955 to 1958. From 1958 to 1969 he was a member of a Chicago law firm and from 1969 to 1970, he served as First Assistant Attorney General of the State of Illinois.

He was appointed to the United States District Court for the Northern District of Illinois in 1970. ¶

### PROPOSED CRIMINAL RULES DELAYED

President Ford on July 8, signed into law H.R. 13899 which is designed to delay the effective date of some proposed amendments of the Federal Rules of Criminal Procedure which were promulgated by the Supreme Court on April 26, 1976 and would have taken effect on August 1 of this year.

However, some of the amendments to the rules will go into effect August 1.

The rules which will **not** go into effect until August 1, 1977, are 6(e), 23, 24, 40.1 and 41(c)(2). During hearings on the bill, key members of the Senate Judiciary Committee said they wanted to delay the effective date of some of the rule amendments which they believed were controversial in order to give Congress additional time to study them and, if necessary, hold hearings.

In addition, the Senate Judiciary Committee also amended the bill to allow the rules and forms governing Section 2254 cases and 2255 proceedings to take effect 30 days after the adjournment of the present Congress. The Speaker of the House of Representatives and the Senate Majority Leader announced that they intend to adjourn the current session October 2. ¶



Pictured receiving the posthumous tribute to Judge Murrah are (l. to r.): Alfred P. Murrah, Jr., David Murrah, his son; Mrs. Murrah; and Mr. Justice Clark.

## JUDGE MURRAH HONORED

At the joint Eighth and Tenth Circuit Conference held at Hot Springs, Arkansas this month, Mr. Justice Clark presented, on behalf of the Center's Board, a posthumous tribute to Judge Alfred P. Murrah who died last October.

Since Judge Murrah was Chief Judge of the Tenth Circuit for 11 years, it was especially appropriate that the presentation was made at this meeting.

In his introductory remarks Justice Clark likened Judge Murrah's philosophy to that of Oliver Wendell

Holmes, Sr., who believed the life's greatest accomplishment is not so much where one stands but in what direction one is moving. The Justice concluded his remarks by saying, "To reach Heaven's port one must sail sometimes with the wind, sometimes against. But the important thing is that one must sail, not drift, nor lie at anchor. . . . Al Murrah never drifted; never anchored; he sailed on one polar star: The law, which he gave of his life to improve its quality." ¶

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

### Congressional Action

The Committee on Post Office and Civil Service has favorably reported H.R. 13297 which will provide for withholding of city income taxes from the salaries of federal officers and employees who are residents of such city.

The Subcommittee on Criminal Justice of the House Judiciary Committee held hearings on two bills, H.R. 11106 and H.R. 11217, both of which provide for the use of unsworn declarations under penalty of perjury in any federal proceeding except a deposition,

oath of office or an oath required to be taken before a specified official other than a notary public.

The Senate Judiciary Committee has favorably reported S. 2278 the "Civil Rights Attorneys Fees Awards Act of 1975" (Senate Report 94-1011). The bill would allow prevailing party other than the United States, in the discretion of the court, a reasonable attorney's fee as part of the costs in proceedings to enforce Sections 1977, 1978, 1979, 1980 and 1981 of the revised statutes or Title VI of the Civil Rights Act of 1964.

S. 3197 which would establish procedures for electronic surveillance in the area of foreign intelligence has been the subject of hearings, both open and closed, by the Senate Subcommittee on Rights of Americans of the Select Committee on Intelligence Activities.



**S. 800** to eliminate three of the technical barriers to consideration on the merits of a judicial action against the federal government, as passed the Senate. The legislation would eliminate the defense of sovereign immunity in federal court actions for specific relief claiming unlawful action by a federal agency or officer or employee.

Secondly, it would eliminate the \$10,000 jurisdictional amount in controversy in cases where the jurisdiction of the district court is invoked on the ground that the matter arises under federal law and the suit is against the United States, an agency thereof, or any officer or employee thereof in his official capacity. Finally, S. 800 would remedy certain technical problems concerning the naming of the United States, its agencies or employees as parties defendant and amend the section concerning venue of actions against federal officers and agencies.

**S. 729** which will divide the Ninth Circuit has been ordered reported to the Senate Judiciary Committee and has been placed on the Senate calendar.

**S. 12**, the Judicial Survivor's Annuity Act amendments, passed the Senate on June 22. Among the major changes are automatic adjustments in present and future annuities as judicial salaries are increased, increase of the dollar amount payable to surviving children, a reduction in years of service requirements for vesting of an annuity, an increase of the deduction rate to 4½% of gross earnings, elimination of the 50 years of age requirement for the widow and provision of coverage for widowers, change in the annuity computation of the average pay from the last five years of service to the highest three years, and a provision for a lump-sum payment by the Congress to the fund to make it actuarially sound. House action is not anticipated until fall.

**S. 3553** to define the jurisdiction of the United States courts in suits against foreign states has been ordered reported by the Senate Judiciary Committee.

The House Judiciary Committee favorably reported H.R. 12882 which would bar Civil Service annuity payments to judges and justices of the United States during active service. The rule has been granted for consideration of the bill and it is pending on the House calendar.

**H.R. 14521**, to clarify the terms of the Speedy Trial Act of 1974, was introduced by Congressman Hutchinson on June 23 and referred to the House Judiciary Committee. The bill would make the exclusions contained in Section 3161(h) applicable to the time limits on defendants in custody under Section 3164. ¶¶

#### **COMPUTER-AIDED TRANSCRIPTION PROJECT NEARS COMPLETION OF FIRST PHASES**

As the first two phases of the Center's project to evaluate computer-aided transcription (C.A.T.) draw to a close, some tentative conclusions have emerged. Technical feasibility has been established, but the type of computer-aided transcription services evaluated by the Center are not economically feasible for federal court reporters under present conditions.

An indication of the economic problem is that none of the reporters who participated in the project continued using computer transcription after Center financial support was stopped. The reason for this is that reporters can obtain transcription services from individuals at less than the computer-aided transcription company's rates per page.

At the beginning of the project, the Center planned to try existing services before studying alternative methods for providing less expensive services. Plans are now proceeding for this latter phase of the project because of the importance of exhaustively exploring every avenue which can lead to the elimination of avoidable transcript delays.

Since the first phase of the project began in January 1975, 107 reporters have submitted sample

stenotype notes for computer compatibility analysis. The purpose of this was to determine what percentage of existing federal court reporters could be expected to be able to use computer-aided transcription. Early in the project it was concluded that 50-60% would have a stenotype writing style which would lend itself to computer transcription. However, experience to date has led the Center's Project Director to conclude 30% is a more realistic estimate.

Forty-three reporters were trained to produce transcript via computer. Initially each participant was to be provided an Electronic Shorthand Transcriber for three months. During this period the Center pays the full cost of the first 200 pages of transcript and half the cost of the next 800 pages. When a reporter reaches 1,000 pages, financial support is ended. When the Center discovered reporters were not producing enough transcript during the three months, the Electronic Shorthand Transcribers were left with them for a longer period of time.

The original project consisted of three phases.

In phase A the reporter records notes on a cassette via the Electronic Shorthand Transcriber and mails the cassette to a computer transcription service company. The firm translates the tape, produces a first run transcript, edits the transcript, prints a final copy and returns it to the reporter.

In phase B video display terminals were installed in several reporter's offices. During this phase the reporter edits via the terminal.

Plans are now proceeding for phase C which will test several alternative methods of providing potentially less expensive computer-aided transcription services.

The reader should be cautioned not to infer from these interim findings that all computer-aided transcription services are economically infeasible since the Center has not yet tested every type of service and costs may be substantially reduced by technological changes during the next few years. ¶¶



## SUPREME COURT COMPLETES ONE OF ITS LONGEST TERMS

The Supreme Court on July 6 completed one of its busiest terms in history with 138 signed opinions.

Here are capsule summaries of the Court's decisions which are of major interest to members of the judiciary. They were prepared by the General Counsel's Office of the Administrative Office of U.S. Courts.

### Michigan v. Mosley (Dec. 9, 1975)

This case involves a further interpretation of the requirements of *Miranda v. Arizona*, 384 U.S. 436 (1966). The defendant had been arrested in connection with several robberies. After being advised of his rights in accordance with the *Miranda* warnings, he declined to discuss the robberies and his interrogation ceased. Several hours later, another police officer, again giving the defendant his *Miranda* warnings, questioned the defendant concerning an unrelated homicide. At this time, the defendant made several statements implicating himself in the homicide which were later used as evidence in his trial for the murder. In response to the defendant's petition that this evidence be suppressed, the Court held that the defendant's incriminating statements had been properly admitted. According to the Court, the defendant's right to cut off questioning had been fully respected by his interrogators who had immediately ceased questioning him concerning the robberies when so requested by the defendant, and had undertaken additional and unrelated questioning only after a period of time had elapsed and after fresh *Miranda* warnings had been given.

### Mathews (Secretary, HEW) v. Weber (Jan. 14, 1976)

The United States District Court has authority under the Federal Magistrates Act of 1968, 28 U.S.C. §636 (1970), to refer to United States Magistrates cases concerning Social Security benefits. The magistrates are authorized to make an initial review of the closed administrative record, to hear oral argument, and to prepare a recommended decision for the district court on the issue of whether the record contains sufficient evidence to support the prior administrative result under circumstances in which the district court has complete discretion to accept or reject the magistrate's findings and recommendation and to hear the matter *de novo*. The Court rejected the argument that the magistrate in this situation was acting as a special master, and, therefore, Fed. R. Civ. P. 53 is not applicable.

### Thermtron Products, Inc. v. Hermansdorfer (Jan. 20, 1976)

The Court held that a United States District Judge exceeded his authority by remanding on grounds not authorized by the controlling statute, 28 U.S.C. §1447(c)(1970), a case which had been properly removed to a federal district court from the state court. The district judge had remanded the case because the court's docket was full and the judge had concluded that the delay in going to trial on the merits would unjustly harm the plaintiff. While 28 U.S.C. §1447(d)(1970) generally bars any appeal from orders of remand, the Court held that subsection 1447(d) must be construed together with subsection 1447(c) and that only orders of remand on the grounds specified in subsection

1447(c) i.e., that removal was improvident and without jurisdiction, are immune from review. The Court further held that mandamus was a proper remedy to compel the district court to hear and adjudicate this action.

### Rizzo v. Goode (Jan. 21, 1976)

In a class action brought by citizens against the mayor and police officials of Philadelphia under 42 U.S.C. §1983 (1970) because of "an allegedly pervasive pattern of illegal and unconstitutional mistreatment by police officers" directed against all citizens, and particularly against minority citizens, the District Court required the police department to establish guidelines for the handling of citizen complaints. The Court of Appeals affirmed the district court's choice of equitable relief. The Supreme Court reversed. According to the Court, the District Court's action exceeded the court's authority under section 1983 and was an unwarranted intrusion by the federal judiciary into the discretionary authority of the police department under state and local law to perform its official duties since the court had found no actual violation of any individual's constitutional rights.

### United States v. Watson (Jan. 26, 1976)

The Court reaffirmed its position that a warrant is not required by the Fourth Amendment in order to make a valid arrest for a felony, when that arrest is accomplished in accordance with otherwise applicable law and is based upon probable cause.

### Buckley v. Valeo (Jan. 30, 1976)

In ruling on the constitutionality of the Federal Election Campaign Act of 1971, as amended in 1974, the Court made the following determinations: (1) that the limitations on campaign contributions by individuals and groups to individual candidates are constitutionally valid because they serve the governmental interest of protecting the integrity of the election process without directly restricting the rights of individual citizens to participate in political discussion; (2) that the ceiling on expenditures by and in behalf of individual candidates is unconstitutional because it directly impinges on the rights of individuals and groups to engage in political debate protected under the First Amendment; (3) that provisions requiring disclosure of contributors and expenditures by candidates are constitutionally valid because they serve the substantial governmental interests of informing the public and protecting the electoral process from corruption; (4) that the dollar check-off provision of 26 U.S.C. §6096 (Supp. IV 1974) authorizing taxpayers voluntarily to contribute to the Presidential Election Campaign Fund by so indicating on their Federal income tax return is constitutional; (5) that the Act's provisions giving to the Federal Election Commission a number of powers in large part violate the Appointments Clause of the Constitution.

### Mathews (Secretary, HEW) v. Eldridge (Feb. 24, 1976)

In a 6-2 decision, the Court held that an evidentiary hearing is not required prior to the termination of Social Security disability benefits, and that the present administrative procedures which provide for a hearing and subsequent judicial review before the termination becomes final fulfill the due process requirements of the Constitution.

### Time, Inc. v. Firestone (March 2, 1976)

The rule established in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), which bars media liability for defamation of a public figure without a showing of "actual malice," was held not to apply to a situation where a respondent is defamed by the

media with respect to events arising out of a divorce proceeding. The Court held that in that context the respondent was not a "public figure" because she did not occupy a role of special prominence in public affairs nor had events thrust her into the forefront of public controversies. For First and Fourteenth Amendment purposes, a public figure is one who occupies a position "of especial prominence in the affairs of society" or is "thrust ... to the forefront of particular public controversies." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974).

The New York Times rule does not automatically extend to all reports of judicial proceedings, regardless of whether the party plaintiff is a public figure who might be assumed voluntarily to have exposed himself to increased risk of injury from defamatory falsehood. The Court reasoned that simply being involved in litigation did not provide substantial reason for a person to forfeit significantly the degree of protection afforded by the law of defamation.

### Imbler v. Pachtman (March 2, 1976)

A state prosecuting attorney who acts within the scope of his duties in initiating and pursuing a criminal prosecution is absolutely immune from a civil suit for damages under 42 U.S.C. §1983 for alleged malicious prosecution. The Court declined to extend the qualified immunity doctrine of *Scheuer v. Rhodes*, 416 U.S. 232 (1974) to a prosecuting attorney as a quasi-judicial officer.

### Ristaino v. Ross (March 3, 1976)

A black respondent was convicted in a state court of violent crimes against a white security guard. At his trial the judge questioned the veniremen during *voir dire* about general bias but declined to question them specifically about racial prejudice. The respondent brought a federal habeas corpus action alleging that he was entitled to have the prospective jurors questioned specifically about racial prejudice. The Court held that he was not constitutionally entitled to have question concerning racial bias asked of the prospective jurors in this case.

According to the Court, the circumstances of this case differ significantly from those in *Ham v. South Carolina*, 409 U.S. 524 (1973) where the Court held that the respondent had a constitutional right to require the asking of questions directed specifically to racial prejudice when the circumstance strongly suggested the need for specific questioning about racial bias. In *Ham* the defendant was well-known civil rights activist and his defense was that he had been framed because of his civil rights activities. Unlike the situation in *Ham*, the Court found that this case did not present a significant likelihood that racial prejudice might infect the defendant's trial. Since the mere facts that the defendant was black and his victim was white and that the victim was a security officer were not aggravating racial factors, the *Ham* requirement did not apply here.

### Hudgens v. NLRB (March 3, 1976)

Labor union members, while engaged in peaceful picketing in front of their employer's leased store on the premises of a privately owned shopping center, were forced to leave when threatened by an agent of the owner with arrest and criminal trespass.

The Court, citing *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972) held that the constitutional guarantee of free expression had no part to play in a case such as this. The pickets here did not have a First Amendment right to enter the private shopping center for the purpose of advertising their strike against their employer. In reaching this conclusion the opinion of the Court, over strong objection



expressly overruled the reasoning of the Court in *Maligamated Food Employees Union Local 590 v. Morgan Valley Plaza, Inc.*, 391 U.S. 308 (1968).

Furthermore, the Court found that the rights and abilities of the parties are dependent exclusively upon the National Labor Relations Act, (NLRA) under which it is the National Labor Relations Board's task, subject to judicial review, to resolve conflicts between NLRA §7 rights and private property rights. Thus, the case was remanded so that the NLRB could reconsider the case under the statutory criteria of the NLRA alone.

#### **United States v. Dinitz (March 8, 1976)**

Here the Court was faced with a question of whether the Double Jeopardy Clause of the Fifth Amendment barred a retrial of the defendant because his original trial ended in a mistrial granted at his request. Even though the defendant made such a mistrial request only after he had been left "no choice" but to seek a mistrial in light of the judge's expulsion of his attorney, the Court stated that, absent a contention or a showing on record of bad faith conduct by the judge or prosecutor, the "manifest necessity standard" of *United States v. Perez*, 22 U.S. (9 Wheat.) 579 (1824) (applicable where a mistrial is declared without the defendant's consent) should not be applied to a mistrial motion made by the defendant. The Double Jeopardy Clause did not, according to the Court, bar a retrial in this instance.

#### **McKinney v. Alabama (March 23, 1976)**

Petitioner, a book stall operator, was convicted of selling matter which had been judicially found to be obscene. The judicial determination of the obscenity of the material arose from an *in rem* equity proceeding; petitioner had not been made a party to the proceeding nor had he been given notice about the action. At his trial, the petitioner was not allowed to raise the issue of the material's obscenity.

The Court found the Alabama procedures, which precluded the petitioner from litigating the obscenity of the magazine as a defense to his criminal prosecution, to be violative of the First and Fourteenth Amendment.

#### **Paul v. Davis (March 23, 1976)**

Respondent brought an action under 42 U.S.C. §1983 against police chiefs who had included his name and photograph on a list of "active shoplifters" which was distributed among local merchants. Respondent had on one occasion been arrested and arraigned for the offense of shoplifting; he had entered a plea of not guilty and the charge had been filed subject to future action at the time the list of shoplifters was circulated by the police department. Shortly after circulation of the list, the action against the respondent was dismissed. In bringing his action against the police departments, respondent alleged that he had been deprived of his due process rights secured under the Fourteenth Amendment and his right to privacy guaranteed by the Constitution.

The Court rejected the respondent's argument that he had been deprived of his "liberty" or "property" guaranteed against state deprivation without due process of law because of the petitioners' defamatory declarations which allegedly had tainted his reputation. The Court distinguished its past decisions, including *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), (a statute authorizing "posting" of persons to whom alcoholic beverages could not be sold because of their history of excessive drinking held unconstitutional for failure to provide procedural safeguards prior to "posting" of individual's name), as cases involving a clear change in or elimination by state law of an individual's right or status which had been previously recognized by the state. In this

case, however, any harm to the respondent's reputation did not deprive him of any "liberty" or "property" recognized under state law nor was his status as previously recognized by state law altered in a significant manner. Thus, regardless of how seriously the petitioners' defamatory statement may have injured respondent's reputation, he was not deprived of any "liberty" or "property" interests protected by the Due Process Clause.

In addition, the Court rejected respondent's contention that his right to privacy had been infringed by the petitioners' publication.

#### **Garner v. United States (March 23, 1976)**

The Fifth Amendment privilege against compulsory self-incrimination is not violated when incriminating disclosures on tax returns are introduced in evidence in a criminal prosecution of the taxpayer. At the time of filing, the taxpayer has the right to claim the privilege against specific disclosures sought on the return; therefore, any such disclosures are not compelled incriminations.

#### **Greer v. Spock (March 24, 1976)**

Respondents had sought to enter upon the Fort Dix, New Jersey military reservation to campaign for President and Vice President, to distribute literature, and hold a political meeting. They were barred from the post because of regulations banning political demonstrations. Suit was brought claiming denial of First and Fifth Amendment rights. The Supreme Court held that since it was the basic function of a military installation to train soldiers and not to provide a public forum, respondents had no basic right to engage in political activity thereon. Federal military installations are not designed to serve as a place for free public assembly and communication of thoughts by private citizens. Moreover, since the regulations banning speeches did not discriminate among candidates, there was no constitutional violation. Finally however, while a regulation banning all political literature could be applied overbroadly, there was no evidence that such a regulation had been applied improperly here. The Court, over strong dissent, distinguished *Flower v. United States*, 407 U.S. 197 (1972), in which it had held that a peaceful leafleteer could not be excluded from the main street of a military installation to which the civilian public had been permitted virtually unrestricted access.

#### **Franks v. Bowman Transportation Co., Inc. (March 24, 1976)**

Applicants who are denied employment because of race, after the effective date, and in violation of, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq.*, may be awarded seniority status retroactive to the dates of their denial. The Court stated that an award of retroactive seniority was essential in "making whole" the victims of job discrimination. In a concurring opinion by Justice Powell, in which Justice Rehnquist joined, it was noted that this award of seniority status which determines pension rights, length of vacations, and unemployment benefits, is analogous to backpay, which is specifically authorized by Title VII, in that its retroactive grant "works complete equity by penalizing the wrongdoer economically at the same time that it tends to make whole the one who was wronged."

#### **Geders v. United States (March 30, 1976)**

A trial court's order directing a criminal defendant in a federal prosecution not to consult with his attorney during an overnight recess, called while the defendant was on the stand as a witness and shortly before cross-examination was to begin, deprives him of the assistance of counsel in violation of the Sixth Amendment.

#### **Goldberg v. United States (March 30, 1976)**

A writing prepared by a government lawyer relating to the subject matter of the testimony of a government witness and which has been signed or otherwise approved by the witness is required by the Jencks Act, 18 U.S.C. §3500, to be produced by the United States in a criminal prosecution. Such writing is not exempt from disclosure on the ground that it is an attorney's work product. The scope of the Jencks Act is not confined to statements given to investigative or law enforcement agents but extends as well to statements by witnesses to government lawyers.

#### **Kelley (Commissioner, Suffolk County Police Dept.) v. Johnson (April 5, 1976)**

A county regulation limiting the length of county policemen's hair is not violative of any right guaranteed to policemen by the Fourteenth Amendment. The county had demonstrated a sufficiently rational justification for its regulation as applied to policemen so as to defeat any claim that their "liberty" interest under the Fourteenth Amendment had been violated. The constitutional claims of public employees, who serve in a uniformed police force, based upon an alleged deprivation of liberty need not be treated in the same manner as a similar claim by a member of the general public.

#### **Baxter v. Palmigiano (April 20, 1976)**

Reaffirming its decision in *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Court held that prison inmates do not have the right to retained or appointed counsel in disciplinary hearings, and that prison officials have the discretionary power to deny or to allow cross-examination and confrontation of witnesses by the inmate. Further, the Court held that drawing an adverse inference from an inmate's failure to testify at such a hearing was a permissible practice because a disciplinary hearing is not a criminal proceeding to which the Fifth Amendment privilege against self-incrimination applies.

#### **Hills (Secretary, HUD) v. Gautreaux (April 20, 1976)**

In a unanimous opinion, the Court held that a court-ordered metropolitan area program to remedy discriminatory public housing practices was not impermissible as a matter of law. The court distinguished its holding in *Milliken v. Bradley*, 418 U.S. 717 (1974) that a court-ordered metropolitan area remedy for school desegregation was unconstitutional, because the order in the housing discrimination case would not consolidate or in any way restructure local governmental units.

#### **Beckwith v. United States (April 21, 1976)**

The Court here held that statements made by the petitioner to Internal Revenue agents during a noncustodial interview concerning a criminal investigation were admissible even though the petitioner had not been given the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966) prior to being questioned. The Court stated that while the petitioner's activities were the focus of the agents' investigation, no *Miranda* warnings were required since the petitioner had not been taken into custody or deprived of his freedom in a significant manner.

(See OPINIONS page 6)



## (OPINIONS from page 5)

**United States v. Miller (April 21, 1976)**

Reversing the Fifth Circuit Court of Appeals, the Court upheld the denial of respondent's motion to suppress evidence collected by serving a subpoena *duces tecum* on respondent's bank for deposit slips and copies of checks. The Court stated that such papers were the business records of the bank and not the personal papers of the respondent, and that since they were negotiable instruments and not confidential communications, their disclosure to the governmental authorities by the bank was not prohibited by the Fourth Amendment.

**Fisher v. United States (April 21, 1976)**

Taxpayers, who were under investigation for possible violation of the income tax laws, turned over to their attorneys certain documents prepared by their accountants. The attorneys then received summonses to produce these records for an Internal Revenue Service investigation. Upon their refusal to comply, enforcement actions were initiated. The Court held that these documents were not privileged in the hands of the attorneys or their clients and ordered them turned over. An attorney's production, pursuant to a lawful summons, of his client's tax records, which had been prepared by the client's accountant, does not violate the Fifth Amendment privilege of the taxpayer against self-incrimination, because the taxpayer, as the person asserting the privilege, has not been compelled to be a witness against himself. Since these taxpayers had transferred the documents to their attorneys for the purpose of obtaining legal assistance in the tax investigation, the documents, if unobtainable by summons from the client, are also unobtainable by summons from the attorney because of the attorney-client privilege. In this case, however, the documents requested in the summons were prepared by the taxpayers' accountants and contained no testimonial declarations by the clients. Since the taxpayer would be compelled to turn over such documents pursuant to a summons, the attorney is obliged to comply with a similar summons.

**Hampton v. United States (April 27, 1976)**

Relying on its decision in *United States v. Russell*, 411 U.S. 423 (1973), the Court held that a defendant may be convicted for the sale to a government agent of an illegal substance provided to him by a government informant. Here, the defendant acted in concert with Government agents in committing the crime, and he admittedly was predisposed to commit the offense. While admitting that he is not entitled to the defense of entrapment because of his predisposition to commit the offense, the defendant urged that his conviction be reversed because the Government's outrageous conduct in supplying him with the contraband denied him due process. The Court, in its plurality opinion supported by three Justices, rejected the defendant's argument, asserting that when the defendant's rights have been violated he will be protected by the defense of entrapment but when the police engage in illegal activity in concert with a defendant beyond the scope of their duties the remedy lies, not in freeing the culpable defendant, but in prosecuting the police for their misconduct.

**Estelle v. Williams (May 3, 1976)**

The respondent in this case, who was held in custody awaiting trial, requested that the jailer return his civilian clothes for him to wear at his trial. The jailer did not comply with this request and

respondent wore jail clothes during his trial. His counsel, while mentioning the clothing during *voir dire*, did not specifically raise the issue with the trial judge. Respondent was convicted and sentenced. He later filed a habeas corpus petition in federal district court which was denied; the Court of Appeals reversed. The Supreme Court over dissent held that although the state could not require the respondent to stand trial wearing prison clothes, since the issue of his clothing was never raised before the trial judge by respondent's counsel, the element of compulsion which would constitute a violation of petitioner's constitutional rights was not present.

**Francis v. Henderson (May 3, 1976)**

The rule established in *Davis v. United States*, 411 U.S. 233 (1973), that a federal prisoner who had failed to challenge within an appropriate time as provided in Fed. R. Crim. P. 12 the allegedly unconstitutional composition of the grand jury which had indicted him in an action for collateral relief under 28 U.S.C. §2255, applies with equal force to the case where a federal court is asked in a habeas corpus proceeding to overturn a state court conviction for an allegedly unconstitutional grand jury indictment. Hence, the Court chose to require compliance with state procedures as a prerequisite to obtaining federal habeas corpus relief unless the petitioner can show good cause for non-compliance and actual prejudice from the alleged constitutional error.

**United States v. Mandujano (May 19, 1976)**

A grand jury witness who is called to answer questions concerning criminal activities in which he may have been involved need not be given the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966). Further, when a *Miranda* warning has not been given and the witness makes false statements to the grand jury, these false statements are admissible in subsequent prosecution of the witness for perjury based on the false statements.

**Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. (May 24, 1976)**

A Virginia statute prohibiting the advertisement by licensed pharmacists of prescription drug prices was held unconstitutional by the Court as a violation of the First Amendment. The Court allowed the action to be brought by consumers as would-be recipients of the information. In its 7 to 1 opinion, the Court stated that some forms of commercial speech, such as the advertisements involved here, are protected under the First Amendment.

**Chandler v. Roudebush (Administrator of Veterans Affairs) (June 1, 1976)**

Under Section 717(c) of Title VII of the amended Civil Rights Act of 1964, a federal employee may file a civil action against his employing agency for allegedly discriminatory practices following the utilization of all administrative remedial procedures. Looking at both the statutory language and at the statute's legislative history, the Court unanimously held that a federal employee has the same right to a trial *de novo* as is enjoyed by employees in the private sector and in state and local government service.

**Simon (Secretary of the Treasury) v. Eastern Kentucky Welfare Rights Organization (June 1, 1976)**

Here, the Court reaffirmed its decisions in *Warth v. Seldin*, 422 U.S. 490 (1975) and *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) on the issue of standing. In this case, several indigents and organizations composed of and designed to

represent the interests of indigents brought a class action on behalf of all persons unable to afford hospital services against the Secretary of the Treasury and the Commissioner of Internal Revenue. They alleged that an Internal Revenue policy provided tax incentives to hospitals which did not serve indigents to the extent of their financial ability, and therefore, encouraged hospitals not to serve indigents. The Court held that while the individual indigents had suffered some injury, the respondents had failed to establish that the asserted injury was a consequence of the defendants' actions or that the prospective relief would remove the harm to the respondents. The respondents' action, therefore, should have been dismissed for lack of standing.

**Hampton (Chairman, United States Civil Service Commission) v. Mow Sun Wong (June 1, 1976)**

In a 5 - 4 decision, the Court held that a Civil Service Commission regulation which barred noncitizens, including lawfully admitted resident aliens, from federal competitive civil service was an unconstitutional violation of due process under the Fifth Amendment.

**Mathews (Secretary, HEW) v. Diaz (June 1, 1976)**

In a unanimous opinion, the Court held that the regulation which provided that aliens must have been admitted for permanent residence in the United States and have resided in the United States for at least five years in order to qualify for enrollment in the Medicare supplemental insurance program does not deprive appellees of liberty or property in violation of the due process clause of the Fifth Amendment. According to the Court, the issue was not whether discrimination between citizens and aliens is permissible, but whether discrimination within the class of aliens is permissible. In holding that such discrimination is permissible, the Court stated that because Congress has broad power in the area of immigration and naturalization and since the Congressional policy at issue here is not unreasonable, it is reluctant to question such a policy decision.

**Washington, (Mayor of Washington, D.C.) v. Davis (June 7, 1976)**

The Due Process Clause of the Fifth Amendment, which guarantees equal protection and thus prohibits invidious discrimination by the Government, does not however establish the principle that a law or some other official act is unconstitutional solely because it has a racially disproportionate impact regardless of whether it reflects a racially discriminatory purpose. In this case, the Supreme Court found that the disproportionate impact of a test, utilized as a screening tool in recruiting police officers, did not by itself establish that the test was a discriminatory device forbidden by the Fifth Amendment. Moreover, the Court held that the strict standards applicable in cases alleging discrimination under Title VII of the Civil Rights Act of 1964 are inappropriate in cases arising under the Fifth Amendment.

**Nader v. Allegheny Airlines (June 7, 1976)**

Immediately prior to his scheduled departure on defendant's airline, the petitioner who had a reserved seat on this particular flight was "bumped," that is, he was informed that he could not be accommodated because the flight had been overbooked and all the seats were filled. The petitioner brought a common law tort action based on the alleged fraudulent misrepresentation by respondent air carrier that he had a confirmed flight reservation. The Supreme Court was faced



th the question of whether the tort action should be stayed pending a reference to the Civil Aeronautics Board for a determination of whether a practice of overbooking is deceptive within the meaning of the Federal Aviation Act, 49 U.S.C. § 1381 (1970). Since the common law remedy sought by petitioner was not in irreconcilable conflict with the statutory procedures of the Federal Aviation Act, as the Act was not intended to immunize the carrier from suits, and because the doctrine of "primary jurisdiction" was inapplicable, that no technical question was involved, the court determined that the tort action should not be stayed.

**Radzanower v. Touche Ross and Co.**  
(June 7, 1976)

The Court held that venue in a suit against a national banking association charged with violating the Securities Exchange Act of 1934 is to be governed by the National Bank Act, which provides that an action against a national banking association may be brought only in the federal district court within the district in which such association is established. In construing the conflicting venue provisions of these two laws, the court held that the National Bank Act, as the earlier enactment but the more specific with respect to banking associations, was not superseded by the Securities Exchange Act which, although subsequently enacted, covers a more generalized subject matter and is not irreconcilably contradictory as to venue.

**United States v. MacCollom (June 10, 1976)**

In a 5-4 decision the Court reversed the decision of the United States Court of Appeals for the Ninth Circuit which held that indigent federal prisoners had an absolute right to a free trial transcript to aid them in preparing a motion for habeas corpus pursuant to 28 U.S.C. § 2255. The court held that 28 U.S.C. § 753(f), which authorizes transcripts upon a judicial certification that the claim is nonfrivolous and the transcript is necessary to decide the issue, does not constitute a denial of the writ of habeas corpus. The right to a free transcript is not a necessary concomitant of the writ, which operated until 1944 with no provision at all for free transcripts for indigents. If Congress thus could have limited the writ directly by "suspending" it, Congress may do so directly. Further, the Court held that § 753(f) does not violate the Due Process Clause of the Fifth Amendment nor infringe upon an indigent prisoner's right to Equal Protection in that indigent prisoners were given means of adequate access to counsel and to their convictions.

**Hortonville Joint School District No. 1 v. Hortonville Education Association**  
(June 17, 1976)

The Court upheld the power of school boards to discipline striking teachers. The Due Process Clause of the Fourteenth Amendment does not guarantee teachers that the decision to terminate employment will be made or reviewed by a body other than the school board, that is by an allegedly more impartial decisionmaker. Mere similarity with the facts of a case gained by analogy, here the school board, in the performance of its statutory role does not by itself disqualify it as a decisionmaker. Moreover, because the school board was the public body accountable to the community for their employment of teachers, it was the appropriate body to discharge teachers.

**Henderson v. Morgan (June 17, 1976)**

The Court ruled 7-2 that when a defendant does not receive adequate notice of the elements of the offense to which he pleaded guilty, his plea is

involuntary and the judgment of conviction violates due process. Here, respondent pleaded guilty to second degree murder without being apprised that intent to cause death was an element of the crime. To be voluntary a plea must constitute an intelligent admission that he committed the offense, and respondent must receive notice of the true nature of the charge against him.

**Doyle v. Ohio (June 17, 1976)**

The use for impeachment purposes of a defendant's silence at the time of his arrest and after he has received the warnings prescribed in *Miranda v. Arizona*, 384 U.S. 436 (1966), violates the Due Process Clause of the Fourteenth Amendment. The Court noted the ambiguous nature of such silence and ruled that it would be fundamentally unfair to allow an arrested person's silence to be used to impeach an explanation that he subsequently gives at trial since he had been impliedly assured by the *Miranda* warnings that his silence would carry no penalty.

**Roemer v. Board of Public Works of Maryland (June 21, 1976)**

The Supreme Court, applying the standard of *Lemon v. Kurtzman*, 403 U.S. 602, that state aid to religious schools in order to be constitutional must have a secular purpose, a primary effect other than the advancement of religion, and no tendency to entangle the State excessively in church affairs, upheld a Maryland statute allowing aid to colleges formally affiliated with the Roman Catholic Church. The aid was deemed constitutional as the colleges were not "pervasively sectarian" and the aid was in fact extended to the non-sectarian side, that is only to non-sectarian programs of the institution.

**City of Eastlake v. Forest City Enterprises, Inc. (June 21, 1976)**

Referendums, which are a means for direct political participation by the people, allowing them, in effect, a veto power over legislative enactments, cannot be characterized as a delegation of power by the legislative body. The people, therefore, may themselves deal with certain matters which might otherwise be assigned to the legislative body. Here, a referendum process when applied to a rezoning ordinance, which allowed the people to approve land use changes passed by the city council, was held not to violate the Due Process Clause of the Fourteenth Amendment.

**Serbian Eastern Orthodox Diocese for the U.S.A. and Canada v. Milivojevic (June 21, 1976)**

A church leader who was removed from his ecclesiastical position filed suit in state court to reclaim, among other things, his church position. The state court found his removal to have been arbitrary and not in compliance with church law. On a writ of certiorari the Supreme Court reversed this holding. The Court ruled that the state court decision constituted improper judicial interference with the decisions of a hierarchical church and thus interposed its judgment into matters of ecclesiastical cognizance and polity, contravening the First and Fourteenth Amendments. Religious freedom encompasses the "power of [religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."

**Young v. American Mini Theaters, Inc. (June 24, 1976)**

The Supreme Court upheld the City of Detroit's "Anti-Skid Row" zoning ordinance that prohibited the establishment of any of ten kinds of "regulated uses" within 1,000 feet of any two already existing

uses. One such use was "adult" theaters, which were defined as being those theaters "characterized by the emphasis on matter depicting specified sexual activities." The Court held that the definition of "adult" theaters, as applied here to two theater operations, was not unduly vague in violation of the Due Process Clause of the Fourteenth Amendment. Moreover, the Court held that the ordinances did not constitute prior restraints in violation of the First Amendment but were valid licensing and zoning requirements.

**United States v. Santana (June 24, 1976)**

Here the court approved the warrantless arrest of an individual who was standing at the doorway of her home when approached by police. *United States v. Watson*, 423 U.S. 411 (1976). Furthermore, the Court extended the doctrine of "hot pursuit" by additionally holding that when the suspect retreated into her own home, the police had the right to make a warrantless entry to prevent destruction of evidence, and thus to effectuate a proper arrest begun in a public place.

**McDonald v. Santa Fe Trail Transportation Co. (June 25, 1976)**

The petitioners, both white, were fired for stealing cargo from their employer while a black employee, charged with the same offense, was not. After the District Court dismissed the complaint of the petitioner on the basis that 42 U.S.C. § 1981 is inapplicable to claims of racial discrimination against whites, and that the petitioners failed to state a claim under Title VII of the Civil Rights Act of 1964, the Supreme Court granted certiorari. The Court reversed the holding of the lower court. First, the Court held that Title VII is not limited to discrimination against members of any particular race, and hence prohibits racial discrimination in private employment against white persons under the same standards as it proscribes racial discrimination against non-whites. Second, the Court ruled that 42 U.S.C. § 1981 prohibits racial discrimination in private employment against white persons as well as against non-whites.

**Runyon v. McCrary (June 25, 1976)**

Private segregated schools in Virginia had rejected applications of black children on the basis of race. The parents of the children challenged this action as illegal discrimination in violation of 42 U.S.C. § 1981 (1970). In reviewing the practices of the schools, the Court held that Section 1981 proscribes denial of admission to students on the basis of race by private, commercially operated non-sectarian schools. Section 1981 provides that all persons within the jurisdiction of the United States shall have equal rights to make and enforce contracts, thus outlawing discrimination in these transactions inasmuch as they involve the making and enforcing of private contracts. While individuals are free under the First Amendment to advocate segregation, it does not follow that this principle protects the otherwise unlawful practice of racial discrimination. As applied here, section 1981 constitutes no more than a reasonable governmental exercise of regulatory authority in respect of a parent's constitutional right to send his or her children to a private school.



## (OPINIONS from page 7)

**Massachusetts Board of Retirement v. Murgia (June 25, 1976)**

The Court held that a Massachusetts mandatory retirement statute which provided "that a uniformed state police officer shall be retired . . . upon his attaining age fifty," did not violate the equal protection clause of the Fourteenth Amendment. The law was found to be rationally based on a legitimate classification. While noting the substantial economic and psychological effects of premature and compulsory retirement, the Court found that the statutory provision had as its rational basis the desire to promote a physically fit police force. The Court did not apply the "strict scrutiny" test applicable in some equal protection cases because it found that there is no fundamental right to government employment per se and that the class of policeman over fifty years old was not a suspect class in need of special protection from discriminatory legislation.

**Meachum v. Fano (June 25, 1976)**

The Fourteenth Amendment Due Process Clause does not entitle a duly convicted state prisoner to a fact-finding hearing when he is transferred from one prison institution to another, the conditions of which are substantially less favorable to him, absent a state law or practice that requires that such transfers be made only on proof of serious misconduct or the commission of specified acts.

**Elrod v. Burns (June 28, 1976)**

In this case the Supreme Court struck down the system of political patronage as a violation of public employees' rights under the First and Fourteenth Amendments because such a system restricts their political associations and beliefs. Hence, a non-policymaking, non-confidential government employee may not be discharged from a job that he is satisfactorily performing, upon the sole ground of his political beliefs. In other words, wholesale turnover of public employees following a change of administration for political reasons is unconstitutional.

**United States v. Agurs (June 24, 1976)**

In *Brady v. Maryland*, 373 U.S. 83, (1963) the Supreme Court held that a prosecutor must disclose to the defense evidence in his possession that would be "material" to the defense. In this case the Court held, however, that unless a prosecutor's failure to disclose is sufficiently significant so as to result in the denial of the defendant's right to a fair trial, the prosecutor does not violate the constitutional duty of disclosure. The mere possibility that an item of undisclosed information might have aided the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. Here, the undisclosed evidence would not have created "a reasonable doubt of guilt that did not otherwise exist," which the court pronounces as the proper standard of "materiality."

**North v. Russell (June 28, 1976)**

A defendant who is charged with a misdemeanor for which he is subject to possible imprisonment, is not denied due process when tried before a non-lawyer police court judge when a later trial *de novo* is available as a matter of right in a second court in which the judges are lawyers. Moreover, the state does not abridge equal protection of the laws by

providing law-trained judges for some police courts and lay judges for others, depending upon the state constitution's classification of cities according to population, because as long as all within each classified area are treated equally the classification on the basis of area and population is reasonable.

**Pasadena City Board of Education v. Spangler (June 28, 1976)**

The Supreme Court overruled the decision of a federal district court which had been upheld on appeal to the circuit court, and held that a federal district court had exceeded its authority when it sought to enforce its 1970 school desegregation order by requiring annual readjustment of attendance zones to ensure that there would not be a majority of any minority students enrolled in a public school. Since changes in the racial makeup of the schools after 1970 resulted from natural population shifts and not segregative action on the part of school officials, there was no constitutional duty to make yearly adjustments of attendance zones.

**Ludwig v. Massachusetts (June 30, 1976)**

The Court held in a 5-4 decision that the two-tier court system which Massachusetts employs for the trial of persons accused of certain crimes was not violative of an accused's Fourteenth Amendment right to a jury trial. This system, according to the Court absolutely guarantees a trial by jury to persons accused of serious crimes, and the manner specified for exercising this right, by seeking a trial *de novo* in the second tier, is fair and not unduly burdensome. Under the Massachusetts two-tier system, a person charged with certain crimes is tried in the first instance in the lower tier without a jury. If convicted, he may appeal to the second tier, and, if convicted after the proceeding on a non-guilty plea, or by admitting sufficient findings of fact, he is entitled to a trial *de novo* by a jury in the second tier.

**Nebraska Press Association v. Stuart (June 30, 1976)**

The Court unanimously held that a state court's order which severely limited press publication of information about preliminary criminal proceedings in a murder case was an unconstitutional restriction of the First Amendment right to freedom of the press. While agreeing with the trial judge's conclusion that pretrial publicity might impair the defendant's Sixth Amendment right to a fair trial, the Court stated that prior restraints on speech and publication are the "most serious and the least tolerable infringement on First Amendment rights." Further, nothing in the record showed that other measures less drastic than the order in question had been considered for the purpose of ensuring a fair trial. The opinion emphasized that, since the framers of the Constitution, aware of the potential conflict between the First Amendment guarantee of a free press and the Sixth Amendment right to a fair trial, had not determined that one right had priority over the other, the Court declines to "rewrite the Constitution" to give either of these guarantees superiority over the other in situations where they conflict.

**Planned Parenthood of Central Missouri v. Danforth (July 1, 1976)**

In this case, the Court considered the constitutionality of Missouri's abortion statute which was enacted after the Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973). The Court held: (1) the requirement that the woman give her written consent prior to undergoing an abortion is not a restriction of the woman's decision concerning the abortion in

violation of the dictates of *Roe* and *Doe*; (2) the requirement of spousal consent prior to an abortion is unconstitutional since if the state cannot regulate abortion during the first trimester when the patient and her doctor make the decision (*Roe* and *Doe*), the state cannot authorize a third party, even if he is the spouse, to prevent the abortion during that period; (3) the blanket requirement that an unmarried minor's parent or guardian must consent to the minor's abortion during the first trimester is unconstitutional for the same reason as that given above, since it allows a third party to interfere with the decision of the physician and the patient to abort, and does so without sufficient justification in violation of the dictates of *Roe* and *Doe*; (4) the prohibition after the first trimester of the most commonly used abortion technique in the country, which is safer for the maternal well-being than even the continuation of pregnancy to normal childbirth, fails as a reasonable regulation for the protection of maternal health and is, therefore, unconstitutional as an arbitrary regulation designed to inhibit the use of abortion after the first trimester.

**Gregg v. Georgia (July 2, 1976)**

In a plurality opinion supported by three Justices, the Court held that the imposition of a death sentence as the penalty for a murder conviction under Georgia law does not violate the Cruel and Unusual Punishment Clause of the Eighth Amendment since it does not "involve the unnecessary and wanton infliction of pain." The Court deferred to the evaluation by the legislature that capital punishment is a necessary sanction, and deterrent in some cases and that its use as a penalty for murder is not grossly disproportionate to the severity of the crime. The Court emphasized that the present Georgia statutes outlined procedures to be followed by the judge or jury in imposing the death sentence which focused the judge's or the jury's attention objectively on the particularized nature of the crime and the characteristics of the individual defendant so as to eliminate the arbitrary and capricious nature of the sentencing found unconstitutional by the Court in *Furman v. Georgia*, 408 U.S. 238 (1972). Applying its reasoning in *Gregg* to other cases, the Court found that the Florida and Texas death penalty statutes are constitutional and that the North Carolina and Louisiana statutes are unconstitutional violations of the Eighth and Fourteenth Amendments.

**Stone v. Powell (July 6, 1976)**

In a 6-3 decision, the Court held that where the state has provided a full and fair hearing on the merits of the petitioner's Fourth Amendment claim, the federal court may not grant habeas corpus relief to a state prisoner on the ground that evidence obtained in an unconstitutional search or seizure was introduced at his trial. In weighing the utility of the exclusionary rule with the costs of extending it to collateral review of Fourth Amendment claims, the Court concluded that since the effectiveness of the rule in deterring improper police procedures at this stage of a criminal proceeding was minimal, the societal interests in the conviction and punishment of guilty offenders required that the rule should not be extended to federal habeas corpus petitions from state prisoners.

**United States v. Martinez-Fuerte (July 6, 1976)**

In a 7-2 decision, the Court held that brief routine stops of automobiles at permanent checkpoints near the United States border are permissible under the Fourth Amendment. Neither probable cause to believe that the vehicle is transporting illegal aliens



or a warrant authorizing stops within a defined area is required. The Court, in balancing the interests at stake, concluded that the governmental need to operate border checkpoints to control the entrance of illegal aliens into the country outweighed the minor intrusion on travellers who are required only to stop briefly and answer several routine questions.

#### **United States v. Janis (July 6, 1976)**

In another decision concerning the exclusionary rule, the Court held that evidence seized by a state criminal law enforcement officer in good faith, but nevertheless unconstitutionally, is admissible in a civil proceeding by or against the federal government. Following reasoning similar to that in *One v. Powell*, (decided the same day) the Court stated that it was not justified in extending the exclusionary rule to cover this situation because there had been no showing that there was sufficient likelihood that the rule would deter proper conduct by state police so as to outweigh societal costs of the failure to prosecute civil offenders imposed by the exclusion.

#### **South Dakota v. Opperman (July 6, 1976)**

Police officers had impounded respondent's automobile for multiple violations of parking ordinances. In conducting a routine inventory of the automobile's contents, they discovered contraband material which was later used as evidence to convict the respondent for possession of an illegal substance. The Court, in reversing a lower court order suppressing this evidence, held that the officers' search was not unreasonable and therefore did not violate the Fourth Amendment. The Court reasoned that the police had a legitimate interest in searching the vehicle to protect themselves and to insure the safety of any vehicles in the car at the time it was impounded. Consistent with its view that the reasonable expectation of privacy in one's automobile is significantly less than that in one's home or office, the Court determined that the search in this case was reasonable within the strictures of the Fourth Amendment.

#### **CA-7 RULE ON OPINION PUBLISHING CHALLENGED**

A motion to test the constitutionality of a rule of the United States Court of Appeals for the Seventh Circuit, limiting the publication of dispositive decisions of the court and prohibiting the citation of unpublished decisions, has been filed in the Supreme Court. It is expected that the Supreme Court will reach the case by next fall.

The issue has been presented to the Court in the form of a motion for leave to file a petition for writs of mandamus and prohibition, which was filed on April 5, 1976, in the case of *Do-Right Auto Sales, et al. v. United States Court of Appeals for the Seventh Circuit*, No. 75-14. The petitioner asks the Supreme Court to invalidate Rule 28 of the Seventh Circuit rules, which

implements the Circuit's policy to "reduce the proliferation of published opinions." This rule is similar in form and objective to those adopted by other circuits at the urging of the Judicial Conference.

Rule 28 of the Seventh Circuit provides that the Court of Appeals may dispose of cases by published opinion or unpublished order at the discretion of a majority of each three-judge panel. It is further provided that a printed and publishable opinion shall be issued only when (1) a new rule of law is established or an existing one altered, (2) an issue of continuing public interest is involved, (3) existing law is questioned or criticized, or (4) a contribution to legal literature can be made through an historical review of the law, analysis of legislative history, or the resolution of a conflict in law.

This rule further provides for cases which do not meet any of the above criteria to be decided by written or oral orders. Such orders are reproduced only in typewritten form and are not permitted to be published. They are prohibited from being cited as precedent either to the courts of the Seventh Circuit in any written or oral submission or by such courts except to support a claim of res judicata, collateral estoppel, or law of the case.

The plaintiff, Do-Right Auto Sales, claims in its motion to the Supreme Court, that this rule's prohibition against the citation of unpublished orders acts as a prior restraint on First Amendment rights of petition and denies due process to parties making submissions to the Court of Appeals. It is also contended that the failure to publish whatever written legal reasoning may be incorporated into such orders, and their unavailability to lawyers and the public except for being filed in the court records of the particular case involved, "undermine[s] the case system by which American lawyers traditionally advocate their clients' causes and by which American jurists, legal scholars and prac-



Groundbreaking ceremonies for the State Center's headquarters building were held at Williamsburg, Va., May 8, 1976. Pictured above are (l. to r.): Justice Paul C. Reardon (Sup. Jud'l Ct. of Mass.), Chief Justice Lawrence W. I'Anson (Sup. Ct. Va.), Justice James A. Finch, Jr. (Sup. Ct. Mo.) and The Chief Justice of the United States.

ticing lawyers gauge and develop American law."

The petitioner in this case was an automobile dealer and had originally filed suit in the Northern District of Illinois challenging the constitutionality of the state's action in revoking its dealer's license without a hearing. Following the denial of its motion to convene a three-judge district court to consider the constitutionality of the state statute in question, the petitioner sought mandamus in the Court of Appeals to require the convening of such a court, and cited a prior unpublished order in support of its mandamus petition. The Court of Appeals granted the state's motion to strike this citation and denied the petition. The plaintiff's motion to the Supreme Court followed.

The Advisory Council for Appellate Justice in its 1973 report on "Standards for Publication of Judicial Opinions" recommended a reduction in the writing of appellate opinions, as a means to reduce appellate delay. It also stated that those decisions designated as not for publication should be prohibited from use as citations and precedents because the unpublished opinion should state only the reasons for decision and should omit the factual background and detail which would be essential for the opinion to have value as precedential law.

(See PUBLISHING page 10)



# doofjc calendar

- Aug. 2-3 Judicial Conference Court Administration Committee, Jackson Lake, Wyo.
- Aug. 2-6 Workshop for Judges (D.C., 4th & 5th (E) Circuits), Atlanta, Ga.
- Aug. 9 Judicial Conference Magistrates Committee, San Francisco, Ca.
- Aug. 12-13 In Court Management Training Institute, San Francisco, Ca.
- Aug. 14-15 F.J.C. Board Meeting
- Aug. 16-20 Orientation Seminar for Probation Officers, Albuquerque, N.M.
- Aug. 16-17 Criminal Justice Records Seminar, Denver, Colo.
- Aug. 26 Judicial Conference Criminal Rules Committee (with Standing Committee on Rules of Practice and Procedure), Washington, D.C.
- Sep. 1-3 In Court Management Training Institute, Toledo, Ohio
- Sep. 2-3 Judicial Conference Budget Committee, Washington, D.C.
- Sep. 13-17 Management Seminar for Chief Probation Officers, Washington, D.C.
- Sep. 13-18 Seminar for Newly Appointed District Judges, Washington, D.C.

## THE THIRD BRANCH

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JULY 1976

## THE FEDERAL JUDICIAL CENTER

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OFFICIAL BUSINESS

- Sep. 17-18 Judicial Conference Appellate Rules Committee, Boulder, Colo.
- Sep. 19-22 Third Circuit Judicial Conference, Philadelphia, Pa.
- Sep. 20-23 Orientation Seminar for Magistrates, San Antonio, Texas
- Sep. 23-24 Judicial Conference of the United States, Washington, D.C.

# PERSONNEL

## Nomination

Marion J. Callister, U.S. District Judge, D. Idaho, July 19

## Confirmations

- J. Waldo Ackerman, U.S. District Judge, S.D. Ill., July 2.
- J. Blaine Anderson, U.S. Circuit Judge, 9th Cir., July 2.

## Appointments

- Maurice B. Cohill, Jr., U.S. District Judge, W.D. Pa., June 1.
- Ralph B. Guy, Jr., U.S. District Judge, E.D. Mich., June 7.
- James C. Hill, U.S. Circuit Judge, 5th Cir., May 26.
- Charles Schwartz, Jr., U.S. District Judge, E.D.La., June 21.

## Elevation

- James R. Browning, Chief Judge, U.S. Court of Appeals, 9th Cir., June 30.

## Death

- Orrin G. Judd, U.S. District Judge, E.D. N.Y., July 7

(PUBLISHING from page 9)

The report stated in support of a prohibition on the citing of unpublished decisions:

"A court has power to determine what material can be cited to it as well as what material it will cite to support a proposition. The non-citation rule does not preclude the use of reasoning and ideas taken from an unpublished opinion that may happen to be in the possession of counsel. The rule says simply that the opinions in certain cases do not have the status of precedents to influence future determination."

The report concluded therefore that the availability of such a decision as precedent might be misleading because of the absence of such qualifying content and would also tend to frustrate the purpose of non-publication by encouraging judges to include additional material in such decisions.

The American Bar Association's Commission on Standards of Judicial Administration in its tentative draft of Standards Relating to Appellate Courts, sets out two alternatives as regards unpublished opinions. The Commission's Chairman, Justice Louis H. Burke, reports that the Commission has not taken a position on this as yet and in his report he invites comment from the bench and bar. A final draft will be presented to the ABH House of Delegates in February 1977. ■

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# The Third Branch

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## Bulletin of the Federal Courts

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# PRESIDENT SIGNS THREE-JUDGE COURT BILL

President Ford on August 12 signed S. 537, the bill which would eliminate requirements for special three-judge courts in cases seeking to enjoin enforcement of state or federal laws on the grounds that they are unconstitutional.

However, the measure would insure that three-judge courts would be retained when specifically required by an Act of Congress or in any case involving Congressional reappointment or the reappointment of any state-side legislative body.

In addition, the three-judge court will insure the right of states to intervene in cases that seek to enjoin state laws on the grounds that they are unconstitutional, thus paralleling the option which the United States has to intervene in cases involving federal statutes.

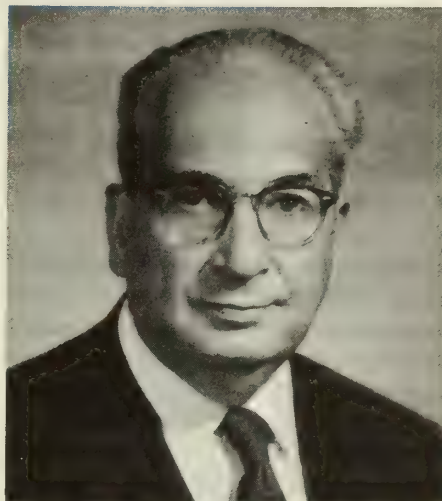
A key section of the bill states that: "A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specific irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on

the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment."

Congressman Robert W. Kastenmeier told the House of Representatives that "The bill in no way affects the right to a three-judge court where otherwise specifically mandated by statute such as in the Civil Rights Act of 1964 or the Voting Rights Act of 1976 . . . ."

He pointed out that since the enactment of the Three-Judge Court Act of 1910 the requirement of a three-judge court has placed an administrative burden on the federal court system. "The scarce judicial manpower of the Nation is inefficiently used by requiring three judges to convene for work that could be performed by one; and very importantly, of course, the limited resources of the Supreme Court are strained by the direct appeal which circumvents the

(See BILL page 2)



Professor Paul A. Freund

### PROFESSOR FREUND PRESENTS MAJOR CONSTITUTIONAL ADDRESS

Harvard Law School Professor Paul A. Freund presented a major address entitled "The Constitution: Newtonian or Darwinian?" at the University of Chicago Law School recently as part of the Department of Justice's series of Bicentennial lectures.

Here are key excerpts from Professor Freund's address. [The full text is available from the Federal Judicial Center Information Service.]

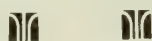
Every constitution is Newtonian in the sense that it confers power and imposes limitations on power . . . The American Constitution is particularly rich in forces and available counter-forces and lever-ages, to the end, as Justice Brandeis put it in his great dissent in the *Myers* case, that liberty may be

(See FREUND page 2)



(BILL from page 1)  
certiorari process. In response, the Judicial Conference requested this legislation to ease the administrative burden on our courts." Congressman Thomas Railsback in a speech on the floor of the House said that "The actual number of cases heard under sections 2281 and 2282 are not that many in number, 140 in 1975. The number of cases, however, does not indicate the actual extent of the burden caused by these cases resulting in a loss of valuable judge-hours.

"In addition to the drain on judicial resources at the district and circuit levels caused by the three-judge district courts, the drain on the Supreme Court's limited resources is even greater because the appeals in these cases go directly to the Supreme Court rather than to the courts of appeals. These cases are particularly difficult for the Supreme Court because they do not reach the Court by application for writ of certiorari. They reach the Supreme Court by direct appeal."



(FREUND from page 1)

preserved by friction. ...

The great virtue of the Newtonian model is that correctives are self-generated, not interposed from without. ...

The nicely poised arrangements, which we may as well call the Madisonian-Newtonian system, rested on the historical premise that political parties did not and would not exist. ...

It is time to take an overview of the Newtonian aspect of the system, the Constitution seen as a set of forces and available counterforces. ...

I would draw three lessons from the system, or at least make three general observations about it.

First, it assumes that each branch has a **capacity** to act that is commensurate with its **authority** to act. On the Congressional side, this means a rationalizing of the legislative process to improve its capability to formulate and carry through a legislative program that is coherent

in policies and technically proficient. ... The capacity of the executive branch is threatened by overload. ... The executive branch, it seems, carries the burdens of a Prime Minister in the parliamentary system without his compensating prerogatives. ...

Above all, the problem of making capacity commensurate with authority requires a President eager to be educated and possessing the will and imagination to be in turn an educator. ...

The second lesson or generalization is that the Newtonian constitution can produce too much equilibrium, a state resembling stagnation.

The third lesson is that extraordinary force in one direction is likely to produce extraordinary, and sometimes excessive, force in another. In the early years of the New Deal the Supreme Court, generally over the dissent of its most respected members, engaged in a series of judicial vetoes that reflected an un-judicial approach to the function of judging. The President, on his part, countered with the Court reorganization plan, whose threat to the independence of the judiciary can best be understood as a response in kind to excessive force.

The Newtonian system demands constitutional morality. It would be possible, by excessive use of legal power, to bring the system to a standstill. ... Without constitutional morality, a nice sense of the fitness of things, the system breaks down.

When we turn to the Darwinian constitution the question is not so much constitutional morality (though that sense can never be irrelevant). The question is rather constitutional vision. ... The constitutional direction, in political, economic, and humane terms, is toward greater inclusiveness. ...

The Darwinian constitution stresses process and adaptation. ... Where, it should be asked, is the responsibility for the Darwinian constitutional evolution? We have too readily assigned it primarily to the Supreme Court. Actually Congress has too often either neglected its opportunities and responsibilities

or has acted tentatively, lacking confidence without a judgment of the Court. ...

When Congress does legislate, it is apt to regard its own constitutional judgment as only provisional to await as a matter of course a submission to the Supreme Court. ... [The] recent campaign finance law ... [is an example].

Given the role of the Court in the Darwinian constitution, how should it be exercised? Justice Holmes used to say that first of all he tried to remember that he was not God. The Fourteenth Amendment, he wrote, does not enact Mr. Herbert Spencer's Social Statics. Neither does it enact, shall we say today, Professor John Rawls' social ecstasies. ...

The test of fairness, it is argued, is whether any measure involving inequality of treatment does or does not leave the most disadvantaged in society better off than before. ...

Beyond procedure and participation there is a third dimension of the organic constitution that is in the process of being drawn. To continue the alliteration, it can be described as personhood—that set of interests that we have come to regard as central to our selfhood. ... The proper scope of autonomy in respect to interests of "personhood" or "selfhood" is perhaps the most vital issue to be faced in the vitalism of the Darwinian constitution.

That constitution, I have said, requires vision, which is to say philosophic awareness. If judges are to continue to lead in this development they require time, and stimulus, and inner resources of mind and spirit. Time—for reflection and self-criticism; and stimulus from reading and discussion. ...

If I were asked to name the most disappointing decision in recent years I would make what is no doubt a surprising selection: *Oregon v. Mitchell*, the 18-year-old vote case. ... My disappointment turns rather on the larger implications of the decision with respect to Congressional authority to carry out the guarantees of the Fourteenth Amendment. ...



Above all, judges like the rest of us need the inner resources to recognize and entertain this set of basic questions. If we are to apprehend the controlled change and growth implicit in the Constitution as an organism, we must have prepared minds. ...



#### QUADRENNIAL SALARY COMMISSION APPOINTED

The Commission on Executive, Legislative and Judicial Salaries has now been constituted following appointments by the President, Vice-President, Speaker of the House and The Chief Justice.

The White House, in a statement issued recently, said that the President has asked the nine members of the Commission, which is charged with recommending salary increases for upper level positions in the three branches of government, to report no later than November of this year so that he may incorporate their recommendations into his budget which he will present to Congress early in the next session.

The Commission will formally come into existence on October 1 of this year. It is authorized by Public Law 90-206 enacted December 16, 1967.

Mr. Peter G. Peterson of New York City, who is chairman of the Board of Lehman Brothers, has been designated Chairman of the Commission.

Here are the other members.

##### Appointed by the President:

L. Lane Kirkland, of Washington, D.C., Secretary-Treasurer, AFL-CIO.

Norma Pace, of New York, New York, Senior Vice President and Chief Economist, American Paper Institute.

##### Appointed by the Vice-President:

Joseph F. Meglen, Esquire, of Billings, Montana.

Demard G. Segal, Esquire, of Philadelphia, Pennsylvania.

##### Appointed by the Speaker of the House:

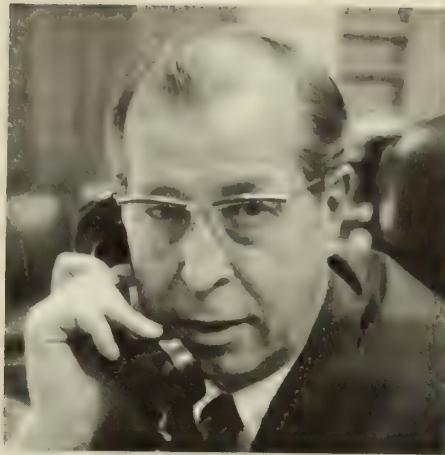
Edward H. Foley, Esquire, of Washington, D.C.

Sherman Hazeltine, of Phoenix, Arizona, Chairman, First National Bank of Arizona.

##### Appointed by The Chief Justice:

Charles T. Duncan, of Washington, D.C., Dean of the School of Law of Howard University.

Chesterfield Smith, Esquire, of Lakeland, Florida.



Chief Judge Clement F. Haynsworth

#### CHIEF JUDGE HAYNSWORTH ADDRESSES FOURTH CIRCUIT

Chief Judge Haynsworth in his opening remarks to the Fourth Circuit Judicial Conference recently, traced the continuing growth in the Fourth Circuit's caseload and said that Congress should be urged to provide additional judgeships if this circuit is to deal with future workloads.

"The volume of the cases continues to swell. Congress is continually enacting new legislation, some of which imposes substantial additional burdens upon the courts. The courts sometimes add to their own burdens, and people seem more and more inclined to turn to the courts for resolution of problems that once would have been left to other solutions.

"There has been no enlargement of the number of Circuit Judges since 1968. In that year, with 97 circuit judgeships throughout the country, the caseload per judge was 68. In fiscal year 1975, the caseload per judgeship throughout the country had risen from that 68 to 172. In fiscal year 1975, the caseload for the Court of Appeals for the Fourth Circuit was 188 per judgeship. The final figures for fiscal year 1976 are not yet in, but the indicated figure for the Fourth Circuit is 212 cases per judgeship. Clearly, our new filings in fiscal 1976 are more than three times as great per judge as the national average in 1968.

"Some additional district judgeships were created in 1970. In that year, with 401 such judgeships, the average civil and criminal caseload per judgeship throughout the country was 317 cases. In fiscal year 1975, that figure had risen to 402 cases per judgeship, while in the Fourth Circuit it was 509 cases per judgeship. Moreover, the number of protracted trials has grown substantially, and there are some classes of cases, such as the black lung cases, in which there are few, if any, settlements. It is a matter of all or nothing, and each of those cases must be tried."



#### REPORT: FJC LIBRARY STUDY

The Federal Judicial Center's year-long study of Federal Court Library Facilities has passed the half-way mark, and a great deal of significant data has been amassed.

One of the primary goals of the Study is a comprehensive inventory of all government-owned books in the Judicial Branch. The inventory will attempt to gain for the first time an accurate picture as to numbers and locations of these books.

To complete the inventory, the cooperation of circuit and district judges, U.S. magistrates, bankruptcy judges, and federal public defenders has been solicited. Approximately 50% of those surveyed have already responded and returns continue steadily.

Based on the returns received to date, a total figure for holdings of approximately 2,700,000 volumes has been projected.

The project aims toward recommendations that will produce better legal research capabilities for the federal courts. Among the specific areas of the study are:

- An examination of unnecessary duplication of library holdings.
- Standards for federal court libraries both as to holdings and personnel staffing.
- The role of technology and computerization in the future of legal research.

(See LIBRARY page 4)



- Physical improvements in the library environment, i.e., moveable shelving, adequate lighting and temperature control, and easy accessibility of materials.

FJC Director, Judge Walter Hoffman, anticipates release of a preliminary report in the fall which will be reviewed by members of the Federal Judicial Center staff and the Advisory Committee established to oversee the project. The final report is due by January 1977.

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

Public Law 94-284, the "Consumer Product Safety Commission Improvements Act of 1976" contains in Section 10 provisions pertaining to attorneys' and expert witnesses' fees. Under this authority the court, in certain actions brought under the Consumer Product Safety Act, may award the costs of suit, including reasonable attorneys' fees and reasonable expert witnesses' fees, including awards of such fees against the United States.

In addition, the Commission has been given authority to initiate, prosecute, defend, and appeal, except to the Supreme Court, through its own legal representatives, unless the Attorney General notifies the Commission that he will represent the Commission. It may also handle its own criminal actions with the concurrence of the Attorney General or through the Attorney General.

### Habeas Corpus

On August 5th the Subcommittee on Criminal Justice of the House Committee on the Judiciary held a hearing on the proposed Habeas Corpus and 2255 Rules of Procedure promulgated by the Supreme Court on April 26th, 1976.

### Bills Introduced

S.3752, amending the provisions of Title 18, United States Code, relating to the sentencing of defendants convicted of certain offenses.

H.R. 15169, to eliminate the appellate jurisdiction of the Supreme Court with respect to certain abortion cases.

H.R. 15173 and 15174 to amend Chapter 5 of Title 5, United States Code (commonly known as the Administrative Procedure Act), to permit awards of reasonable attorneys' fees and other expenses of public participation in proceedings before federal agencies.

H.R. 14896, to amend Title 18, United States Code, so as to establish certain guidelines for sentencing and to establish a United States Commission on Sentencing was introduced by Congressman Tsongas.

### Pending Legislation

On August 6, the Senate passed in amended form the tax reform bill of 1976, H.R. 10612.

**Civil Service Annuities and Reemployment Pay Amendments of 1976.** H.R. 3650 which will clarify the situation with respect to reemployed annuitants and provide for certain additional transfers of funds to the Civil Service annuity fund passed the Senate on August 9th with an amendment which would make it applicable only to Fiscal Year 1977. The bill will be returned to the House for its concurrence.

**Copyright Law.** The Subcommittee on Courts, Civil Liberties and the Administration of Justice of the House Judiciary Committee has unanimously approved for full Committee Action, S. 22 for the general revision of the copyright law.

**National Court of Appeals.** Hearings are now scheduled to be held on S. 2762 a bill to establish the National Court of Appeals. The hearings will be held by the Subcommittee on Improvements in Judicial Machinery of the Senate Judiciary Committee.

**Electronic Surveillance.** The Senate Select Committee on

Intelligence Activities has ordered favorably reported with amendments S. 3197 authorizing applications for court orders approving the use of electronic surveillance to obtain foreign intelligence information.

The Subcommittee on Juvenile Delinquency of the Senate Judiciary Committee has held hearings on S. 3411 and S. 3654 which would strengthen the federal effort to curb traffic in dangerous drugs.

**Antitrust Parens Patriae Act.** H.R. 8532, the Antitrust Parens Patriae Act, has passed the Senate with an amendment and been returned to the House. The House Rules Committee has granted a rule providing for agreement to that Senate amendment. This bill has not yet been acted on by the House.

**City Withholding Taxes.** H.R. 13297 has passed the House and is now pending in the Senate. The bill will provide for the application of city withholding taxes to federal employees who are residents of such city, provided the number of federal employees within the city meets the requirements of the Act.

**Antitrust Civil Process Act.** H.R. 13489 to amend the Antitrust Civil Process Act to increase the effectiveness of discovery in civil antitrust investigations has passed the House and is now pending in the Senate.

**Financial Disclosure.** The Senate has passed and sent to the House S. 49 which will establish a special prosecutor within the Department of Justice and will provide for an Office of Congressional Legal Counsel. In addition it requires financial disclosure on the part of judges and justices and federal employees receiving pay at the GS-16 or higher rate of pay. Such financial reports would be made to the Comptroller General. In the case of Judiciary employees a copy would have to be provided to the Director of the Administrative Office. All of these reports would be public documents and there would have to be procedures established for their review to determine the possible existence of conflict of interest or other problems.



The Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee has held several hearings on H.R. 3249 which would require candidates for federal office, Members of Congress and officers and employees of the United States, including judges and justices, to file statements with the Comptroller General with respect to their income and financial transactions. The Subcommittee received testimony from the General Counsel of the Administrative Office of the United States Courts on behalf of the Judiciary as well as from numerous other Government agencies and private citizens. Other bills which are pending covering these same subjects are H.R. 15067 and H.R. 14795. H.R. 14795 provides that the reports of justices and judges and employees in the Judicial Branch would be filed with the Director of the Administrative Office. The Comptroller General would have access to the reports.

**Grand Jury Reform.** The House Judiciary Committee, Subcommittee on Immigration, Citizenship and International Law has held hearings on H.R. 1277, H.J. Res. 46 and several other related bills concerning reform of the grand jury system.

**QUALIFIED APPLICANTS:  
APPLY NOW  
FOR JUDICIAL FELLOWSHIPS**

The Judicial Fellows Program, now in its fourth year of operation, is already underway with preparations for its fifth year. The program is designed to allow highly talented young professionals the opportunity for creative work and broad first-hand experience in the field of judicial administration.

Interested candidates should seek information from and submit applications to Mark W. Cannon, Administrative Assistant to the Chief Justice, Supreme Court of the United States, Washington, D.C. 20543. Applications should be submitted by November 8, 1976 in order to assure consideration.

**CLERKS DIVISION:  
AN UPDATE REPORT**

In May 1975, the Clerks Division was established within the Administrative Office for the primary purpose of enabling the A.O. to address in a disciplined, system-wide manner those common problems restraining the administrative and management effectiveness of the federal courts, thus assuring the optimum use of Judiciary resources.

The mission of the Division is to assist in and coordinate efforts to provide the necessary training, standardization, organizational and procedural innovations and developments, and to act as a liaison to aid the Clerk in all phases of his operation.

With increasing frequency, judges are recognizing the advantage of separating the judicial function from the administration of clerical effort. With the delay in the appropriation of additional judgeships, it is imperative that existing judges be freed from administrative distractions so they can concentrate on the disposition of their assigned caseload.

Gaining the trust and respect of the courts continues to be a paramount goal of the Division. One way to gain this respect is to assist in the development of a meaningful, comprehensive program and problem-solving environment, thereby enabling Clerks to be as knowledgeable as possible regarding court administration. Another goal of the Clerks Division is to inventory skills of clerks and deputy clerks so that their substantive problem areas can be intelligently addressed.

The Division also has begun to help ease the inequities that exist with respect to the allocation of judicial resources to individual courts, as well as to evaluate the adequacy of existing salary scales for members of clerks' offices when compared to the level of their work responsibilities. The Division must gain adequate exposure to procedures in clerks' offices to document effective procedures that exist for dissemination and adoption by

other courts while suggesting alternatives to existing, inefficient, procedures.

To date major accomplishments are:

- Acquisition of a competent, objective staff with the necessary attributes to make this Division effective.

- Assisting the Federal Judicial Center's Division of Education and Training in establishing a formal training program, including problem-solving seminars for clerks and deputy clerks.

- Assisting the Federal Judicial Center's Division of Education and Training in conducting two comprehensive, problem-solving oriented training seminars highlighted by group sessions wherein a full, mutual exchange of ideas took place. The major results of the clerks' seminars were the creation of a Central Violations Bureau Advisory Committee, initiation of an updated Clerks Manual, and advocacy of small purchase authority for clerks.

- Developing guidelines assessing the advantages and disadvantages of consolidating bankruptcy and magistrate clerical functions under the Clerk of Court.

- Reducing the effort and costs for handling naturalization certificates in the Clerk's office through the use of the "Electraseal" (a modern device for placing seals on official documents) and self-correcting typewriters.

- With the assistance of the Federal Judicial Center, developed the required methodology and data base for a caseload forecasting model which improves the ability of the Administrative Office to assess individual court workload estimates and related manpower requests.

During fiscal year 1976, 22 district courts and three circuit courts were visited. In each instance specific problems were addressed and in most instances procedural improvements resulted.





Judge Constance Baker Motley

### FJC HOLDS SEMINAR ON WOMEN IN CRIMINAL JUSTICE

The Federal Judicial Center convened a group of women probation officers in Washington, D.C. on July 21-22 to discuss the impact of the increasing role of the woman offender in the Criminal Justice System.

Sixteen women probation officers selected from courts representing geographical locations throughout the U.S. attended the seminar and discussed two major topics: (1) the woman offender in criminal cases, and (2) the role of the woman probation officer in the Criminal Justice System. James F. Haran, Chief Probation Officer (E.D. N.Y.) and Probation Training Program Coordinator, together with the Center staff, developed the curriculum.

Judge Constance Baker Motley (S.D. N.Y.) addressed the group on the topic, "The Court and the Female Offender." Critical areas such as the following were discussed: Does the court see differences in offenders—male and female? Does female attractiveness result in special consideration by court personnel? Do females get lighter sentences for the same crimes committed by males? Is the court reluctant or unable to deal dispassionately with the female offender? And is the female better off with "biased" justice?

Dr. Dorothea Hubin, Professor of Sociology at Fairleigh Dickinson University, discussed "The Female Offender." These concepts were

discussed by Dr. Hubin and the group: Are females different from men in their needs and aspirations? Are their needs more culturally conditioned than psychologically founded? Is the role of the female offender changing? How does a probation officer respond to the many moods of the female offender? Are females more manipulative than dangerous? Should women be jailed or diverted out of the system? And is the female's motivation for crime different from the male's?

The topic, "The Prosecutor and the Female Offender," was discussed by Mary Ellen Abrecht, Assistant U.S. Attorney (Dist. D.C.) and "The Female Offender in Custodial Settings" was discussed and described by Virginia W. McLaughlin, former Warden, Federal Reformatory for Women, Alderson, West Virginia, and Margaret C. Hambrick, Supervisor of Education at Alderson.

Michele A. Smollar, Executive Director of the Women's Prison, New York City, shared her experiences in the "Post-Release Problems of the Female." ■■

### NATIONAL GAMBLING COMMISSION REPORT ISSUED

The Commission on the Review of the National Policy toward gambling issued its interim report late last month containing the Commission's preliminary findings and conclusions concerning gambling in America.

The final report will be issued this fall after the Commission has received comments regarding its recommendations and conclusions.

Here are some of the Commission's conclusions:

"More than 60 percent of all adult Americans gamble—both legally and illegally. In 1974, at least \$24 billion was wagered—and, at a minimum, \$5 billion of that amount was bet with illegal operators. Today, 33 states have some form of legal gambling, and others are considering legalization.

As legal forms of gambling increase, the States are faced with a number of problems: How can State treasuries obtain the largest profits possible from the legalized games? How can the crime and corruption often associated with gambling be controlled? What federal laws now interfere with State gambling policy? Should these laws be changed? How does legalized gambling affect society? What is the impact of legal gambling markets on the illegal games?

To date, most decisions about instituting legal gambling, allocating law enforcement resources for gambling, and establishing revenue priorities have been based on guesswork and emotion rather than fact. No comprehensive, systematic study has ever before been conducted to obtain the kind of information needed to formulate sound gambling policy.

At the same time, however, the Congress realized that while federal antigambling authority had been strengthened, a number of States were considering legalization of some gambling activities, thus creating the potential for conflict between federal and state law. It also recognized the necessity of a thorough survey of federal and state gambling statutes: some laws may be outdated, and others—especially federal and state laws—may conflict.

The act required the Commission to undertake a "comprehensive legal and factual study" of the country's gambling policy as it is manifested in laws and regulations at every level of government. The act mandated, further, that the Commission review the effectiveness of the entire criminal justice system—law enforcement, the courts, and corrections agencies—in implementing these laws. It also gave the Commission the task of studying the experience of foreign governments in dealing with gambling and assessing their relative success or failure in doing so.

Finally, the Commission was asked to propose—as a result of its research and the conclusions drawn from it—appropriate modifi-



ation of federal and state laws and practices. As a federal agency, the commission paid particular attention to the utilization of federal gambling statutes.

Some recommendations:

- Congress should consider taking action to protect the States' continued authority to determine their own gambling policies.

- Legislation prohibiting interstate gambling or gambling-related activities should be retained.

- Section 18 U.S.C. 1511 should be expanded to cover bribery arising out of other illegal activities as well as gambling.

- To encourage gamblers to use legal betting facilities when faced with the choice of legal and illegal facilities the Commission recommended that Congress consider adopting a policy, employed by many other countries, of exempting gambling winnings from income tax when such winnings are derived from illegal entities. In the alternative, a different rate of taxation could be applied from winnings derived from illegal gambling activities.

- Lottery tickets and advertisements should not be barred from interstate commerce when they are legal both in the state of origin and the state of destination. Broadcasts of information about legal lotteries should be permitted by licenses in any state where the purchase of the tickets that are the subject of the broadcast is authorized by law.

- The primary authority for gambling enforcement should be transferred to state law enforcement agencies.

- Electronic surveillance in gambling cases should be continued.

- Where it can be shown that the offender is a major gambling figure involved in organized crime, a sentence of at least one year in prison together with a fine of \$1,000 more should be given.

## BOARD OF INQUIRY REPORTS ON LEWISBURG PROBLEMS

Following eight murders in the United States Penitentiary at Lewisburg, Pennsylvania and a number of serious assaults on inmates, two federal judges expressed their concern about the conditions at this major federal prison.

As a result of the concern of these federal judges, members of the Congress and the Director of the Bureau of Prisons, a six-member Board of Inquiry conducted an in-depth evaluation of the conditions at Lewisburg during the period June 8-15, 1976.

Concerning the killings, the Board of Inquiry found that all but two of them occurred in housing units and that several of them were related to some type of homosexual involvement.

The Board found that the institution has been operating consistently under overcrowded conditions for several years. However, they noted that "The one factor that stands out above all others as a viable explanation for the recent homicides and assaults at the Lewisburg Penitentiary is the number of young, aggressive, immature and criminalistic inmates."

They reported that the problems of the institution center around four common themes: Communication, visibility and availability of top staff, accountability and control, and staff attitudes and morale. The investigation also revealed that the lack of control of contraband in the housing units at the institution is "almost overwhelming."

## The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts

## SUPREME COURT HISTORICAL SOCIETY MARKS FIRST YEAR

The Supreme Court Historical Society has accomplished a great deal since last May when it was created. The first step was the establishment of an active publications program. *Yearbook 1976* was launched this year to give the general and professional reader, in attractive pictures and text, articles on the history and personalities of the Court since 1789.

The Society has joined with the American Revolution Bicentennial Administration and the U.S. Capitol Historical Society in developing and publishing a colorfully illustrated book on the Magna Carta and its relationship to the Declaration of Independence.

The Supreme Court Historical Society made its appearance on the eve of the Bicentennial and was able to participate in some of the Bicentennial activities of the Supreme Court. The Society is assisting the Court in completing its display of marble busts of the Chief Justices and its collection of oil portraits of former Justices.

The organization is also the co-sponsor of the Court's Bicentennial exhibit, "The Supreme Court and the American People," a colorful and interesting interpretation of the nation's relationship with its highest tribunal as depicted over the years through art, literature and the news media. This exhibit can be viewed on the ground floor of the Supreme Court Building. The Society plans to open an exhibit commemorating the late Justice Hugo L. Black this fall.

As of this report, the Society has over 1,200 members. During the next year the Membership Committee plans to expand their activities to include more personal contact through state and regional membership representatives throughout the country. The Chairman of the Membership Committee is Fred M. Vinson, Jr.

Major objectives now are:

- To acquire and disseminate knowledge to the public about the

(See SOCIETY page 8)



# dojfc calendar

- Sept. 1-3 In Court Management Training Institute, Toledo, Ohio
- Sept. 2-3 Judicial Conference Budget Committee, Washington, D.C.
- Sept. 13-17 Management Seminar for Chief Probation Officers, Washington, D.C.
- Sept. 13-18 Seminar for Newly Appointed District Judges, Washington, D.C.**
- Sept. 17-18 Judicial Conference Appellate Rules Committee, Boulder, Colo.
- Sept. 19-22 Third Circuit Judicial Conference, Philadelphia, Pa.**
- Sept. 20-23 Orientation Seminar for Magistrates, San Antonio, Texas
- Sept. 23-24 Judicial Conference of the United States, Washington, D.C.**
- Sept. 26-28 Conference of Metropolitan Chief Judges, New Orleans, La.
- Sept. 27-29 Seminar for Circuit Court Clerks, Atlanta, Ga.
- Sept. 27-Oct. 1 Rational Behavior Therapy Workshop for Probation Officers, Savannah, Ga.
- Oct. 13-15 Seminar for Bankruptcy Chief Clerks, St. Louis, Mo.

# PERSONNEL

## Nominations

- Donald G. Brotzman, U.S. District Judge, D.Colo., July 22
- Marion J. Callister, U.S. District Judge, D.Idaho, July 19
- Richard M. Bilby, U.S. Circuit Judge, 9th Cir., August 3
- James A. Anderson, U.S. District Judge, E.&W.D.Wash., August 6
- John H. Moore, II, U.S. District Judge, S.D.Fla., August 4
- Sidney M. Aronovitz, U.S. District Judge, S.D.Fla., August 4
- Harry W. Wellford, U.S. Circuit Judge, 6th Cir., August 4
- W. Eugene Davis, U.S. District Judge, W.D.La., August 5
- Donald E. Walter, U.S. District Judge, W.D.La., August 5
- Herbert F. DeSimone, U.S. District Judge D.R.I., August 5
- Vincent L. Broderick, District Judge, S.D. N.Y., Aug. 26

## Confirmation

- Cecil F. Poole, U.S. District Judge, N.D.Calif., July 23

## Appointments

- J. Waldo Ackerman, U.S. District Judge, S.D.Ill., July 26
- John Powers Crowley, U.S. District Judge, N.D.Ill., July 20
- William A. Ingram, U.S. District Judge, N.D.Calif., August 4

- Mary Anne Richey, U.S. District Judge, D.Ariz., July 9
- William W. Schwarzer, U.S. District Judge, N.D.Calif., August 4
- Robert M. Takasugi, U.S. District Judge, C.D.Calif., July 6
- Laughlin E. Waters, U.S. District Judge, C.D.Calif., July 7

## Elevation

- J. Blaine Anderson, U.S. Circuit Judge, 9th Cir., July 23

## Death

- William J. Lynch, U.S. District Judge, N.D.Ill., August 9
- Michael H. Sheridan, U.S. District Judge, M.D. Pa., August 23

(SOCIETY from page 7)

Supreme Court and the entire Judicial Branch of the United States Government;

- To acquire documents, objects of historical significance, objects of personal property and other memorabilia related to the Society's purposes;

- To make the knowledge and materials acquired available to scholars and historians;

- To incorporate these items into continuing displays within the Supreme Court Building or elsewhere.

## THE THIRD BRANCH

VOL. 8, NO. 8 AUGUST 1976

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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## Bulletin of the Federal Courts

VOL. 8, NO. 9

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

SEPTEMBER 1976

### ADMINISTRATIVE OFFICE, FEDERAL JUDICIAL CENTER RELEASE ANNUAL REPORTS

Two reports of national significance were released in late August: The annual reports of the Administrative Office and the Federal Judicial Center, as required by law. Copies of both reports will be available from the FJC Information Service later.

#### The Administrative Office

The Administrative Office report points out, among other things:

**Courts of Appeals.** During the 12 months ending June 30, 1976 the appellate courts continued to show the burden of filings, which rose by almost 11 percent over a year ago. Terminations in the courts of appeals surpassed last year's figure but were short 2,000 of the 18,408 cases filed. This resulted in another record year-end pending increase of 16.3 percent, for a total of 14,110 pending appeals cases.

**District Courts—Civil Cases.** Civil cases filed in the 94 district courts increased by 11.3 percent. While the number of civil cases terminated rose by approximately 5,400 over a year ago, the 140,189 pending cases represented another record increase of 17.1 percent. As of June 30, 1976, there were 351 civil cases pending per judgeship, 2 more than a year ago.

**District Courts—Criminal Cases.** Criminal cases filed in the district courts declined more than 5 percent during the year. The decrease in criminal case filings resulted in part from a change in case reporting procedures required by the enactment last year of the Speedy Trial Act. (See A.O. page 5)

#### The Federal Judicial Center

FJC Director Walter E. Hoffman, in releasing the Center's annual report commented that "The past year has been one of expanded activity . . . which reflects both our attempt to provide greater service to the federal judiciary and an increase in the resources generously provided by the Congress." In expressing appreciation for cooperation from the federal judges and their supporting personnel, the Director added special words of gratitude for the dedicated service of Judge William J. Campbell, who "has continued to contribute so significantly to [the Center's] educational programs."

Reports on some ongoing projects were: a pilot project to determine the value of having a senior staff attorney assist the court in the preliminary stages of civil appeals—a project which also facilitated assessing the effects of the Civil Appeals Management Project in the Second Circuit; an evaluation of computer assisted legal research systems; a project which evaluated a computerized citation verification system (Autocite); and a project to evaluate and stimulate the use of computer-aided transcription by judges. (See F.J.C. page 6)



Judge Shirley M. Hufstedler

#### JUDGE HUFSTEDLER LECTURES ON WOMEN AND THE LAW

In a Bicentennial lecture sponsored by the Department of Justice, Judge Shirley M. Hufstedler (CA-9) traced the historical struggle of women to achieve equal rights.

Her address, which was delivered at Hastings Law School in San Francisco, is part of a series sponsored by the Department.

Here are key excerpts from her address. (The full text is available from the Federal Judicial Center Information Service.)

A Bicentennial celebration of women's consent to their government is 144 years premature. A Bicentennial celebration of women's equality in law and in fact cannot be scheduled because the inaugural date has not arrived.

The revolution continues, but hope abides that women's "patient sufferance" need not endure an-

**PRESIDENT ORDERS PAY INCREASE FOR MOST FEDERAL WORKERS (See page 7).**



other hundred years before they too may proclaim equality as their inalienable right.

The history of this social revolution does not begin with a shot heard 'round the world. The beginning is too inconspicuous to identify, but it is appropriate for this occasion to say that the women's rights movement started in May, 1787, when some of our founding fathers attending the Constitutional Convention, audaciously proposed that the convention adopt a clause permitting women to vote. The proposal was resoundingly defeated.

Until 1830 women's rights pronouncements, other than those heard from a few, were fairly static. But in 1848 Lucretia Mott and Elizabeth Stanton formally initiated the women's rights movement at the Seneca Falls Convention. The women's declaration indicted the tyranny of the laws imposed by American men on American women.

The portrait was accurate. The doors to opportunity were firmly closed against all women. [In education, employment, politics, and in covenants of marriage women's rights were rigidly restricted.]

It would be wrong, however, to assume that this bleak picture was primarily a by-product of enacted law . . . . The family was the basic production unit, and women were the essential producers. Women were required to bear bountiful crops of children, for the surviving children became both the labor force and the armies.

The law did not create these conditions. The conditions created the law. Women were a very powerful force in the cause of abolition. In turn, abolition provided women with their opportunity to learn the elements of politics: . . . [the right of females to pursue any lawful occupation for a livelihood].

If one believes that a human being is inferior, and, acting on that belief, tells the child early enough and often enough about his or her inferiority, the belief will be fulfilled, regardless of the treasures with

which he or she was born. If a society implements the same belief by closing off all resources from which he or she could obtain intellectual nourishment, the person's intellectual yield will be as barren as society expected.

It is not surprising that the vast majority of women surrendered to the dominant social dictates.

The inventions of the telephone and the typewriter, for example, had much more to do with women's entry into the white collar labor market than all of the picketing, pamphleteering, and marching combined. Like the Civil War, the First World War pulled women out of their homes and into the labor force.

The suffragettes had hoped that women would vote as a bloc, and that the old walls of sexual discrimination would tumble down as women trumpeted their new power. The anti-suffrage forces were terrified that the suffragettes were right. Both were wrong. [Women voted then as now, according to personal conviction.]

That fact, however, should not blind us to the reality that suffrage was a real achievement, not only for the women, but also for the whole country.

With the outbreak of World War II married women became half of the female work force, and women made up 32 percent of the labor force. With the end of World War II, the social and economic forces were abruptly reversed.

At least by 1955, it should have been evident that these changes [in science and technology] and others over the prior 50 years that had drastically transformed the nation had also profoundly affected the roles that society had earlier assigned to women, to men, and to the family.

Like their long-forgotten predecessors, the abolitionists and suffragettes, these young women with a cause learned how to organize,

petition, demonstrate, fight, and go to jail.

An early by-product of the renewed interest in the plight of women was the creation in 1961 of a Presidential Commission on the Status of Women, chaired by Eleanor Roosevelt.

The combination of all of these forces gave further impetus to the women's movement. One response was reactivation of the Equal Rights Amendment to the Federal Constitution, which had languished for more than 50 years. The heart of the Amendment is one simple sentence: "Equality of rights under the law shall not be denied or abridged by the United States or by a state on account of sex."

The fate of the Amendment is still in doubt. What is not in doubt is that the path to adoption is very steep and bristling with nettles.

What happened on the way to women's equality? The enemy is fear, and many of the fears are not irrational.

At least some of the opposition to the Equal Rights Amendment stems from fear of directly confronting the implications of role equality. . . .

Another attack on the Equal Rights Amendment is that it is entirely unnecessary because the Fourteenth Amendment is room enough to combat sex discrimination.

The Equal Rights Amendment would not invalidate alimony and child support statutes, except to the extent that those laws invidiously favor one sex over the other.

In the context of the Equal Rights Amendment, equality means that women cannot be treated more or less advantageously than men solely because of their sex.

Marriage, children and home will not disappear with or without the Equal Rights Amendment.

After 200 years of sound and fury, accommodation and acrimony about the place of women in our society, only one reason emerges requiring the adoption of the Equal Rights Amendment: The reason that it is just.



## CENTER BEGINS PROJECT TO GENERATE DATA ON IMPACT OF PROPOSED MANDATORY MINIMUM SENTENCING LEGISLATION

In the continuing debate over the relationship between levels of crime and measures of punishment, mandatory minimum sentencing has often been suggested as a viable and needed alternative to current sentencing practices. Several of the states, among them Massachusetts, Connecticut and Missouri, have recently enacted statutes requiring mandatory prison sentences upon conviction of certain offenses. During the Ninety-fourth Congress alone, more than thirty separate bills or resolutions were introduced, all calling for mandatory minimum sentences. The minimum terms proposed vary from that of six months to a mandatory term of life imprisonment. In addition, the proposals would apply to a wide range of offenses and the majority of them would remove the judge's discretion, in certain instances, to sentence a defendant to a suspended or probationary term.

The Research Division of the Judicial Center, with the cooperation of the Probation Division of the Administrative Office, is currently conducting a project that is aimed at generating data on the possible impact of several of the major mandatory minimum sentencing proposals which were pending before this Congress. The project is directed at determining how federal judges are currently sentencing in those cases that would be covered by the proposals. More specifically, it will be concerned with determining the frequency with which judges imposed sentences in fiscal 1976, that would conflict with the mandatory minimum proposals. Fiscal 1976 criminal terminations data of the Administrative Office for all district courts is being used.

The project is being conducted in four stages. The first, which has been completed, involved the identification and analysis of various bills and resolutions which would

impose mandatory minimum sentences. As part of the process of identifying and analyzing the various proposals, discussions were held with congressional and Justice Department staff members. Based on those discussions, several of the proposals were identified as having enough support to warrant their being included in the study.

The second state of the project, which has been completed involved the identification of the specific cases in which shorter sentences than those proposed by the mandatory minimums were imposed in fiscal 1976.

The third stage of the project will consist of collection and analysis of the presentence reports of all cases, identified in the second stage of the project, in order to determine whether any of the proposed exceptions to the mandatory minimums would have applied.

Most of the proposals have provisions which would permit the sentencing judge to avoid imposing the mandatory minimum term if the defendant meets certain criteria. Some of the exceptions, for example, relate to the defendant's age or state of mind at the time of the commission of the offense. A determination of whether a particular defendant meets any of the exceptions would be made in a separate sentencing hearing conducted before the court sitting without a jury.

The fourth stage of the project, expected to be completed in the near future, will consist of the final data analysis along with the dissemination of the results of the project.

There are a number of potential consequences which could result from the enactment of mandatory minimum sentencing legislation, not only on federal sentencing practices, but on other aspects of the federal criminal justice system as well. It is expected that the results of this project will provide some empirical insights into the need, desirability and possible impact of such legislation.



Chief Judge Collins J. Seitz

## CHIEF JUDGE SEITZ ADDRESSES THIRD CIRCUIT JUDICIAL CONFERENCE

In his remarks on the State of the Judiciary of the Third Circuit, Chief Judge Collins J. Seitz said that the mounting backlog coupled with the impact of the Speedy Trial Act have made it imperative that Congress act immediately to provide additional judges for the Third Circuit.

Here are excerpts from Chief Judge Seitz's address. [The full text is available from the FJC Information Service.]

The annual reports of the six districts within the Third Circuit indicate not only a mounting backlog but a dramatic increase in bankruptcy filings. The increase in requests to review administrative action is equally foreboding.

"Despite the predictably growing backlog, the District Courts have not been given the judge manpower which would permit them to stay current. The situation cries out for help in the District of New Jersey and even more desperately in the Middle District of Pennsylvania..."

In that district three judges now are coping with an average caseload of 635 cases each. "The situation in the Middle District is so desperate that a fifth judgeship is needed... but Congress apparently considers the prompt judicial processing of our citizens' controversies a low priority."

Turning to the Appellate Court, Judge Seitz stated that, "Within two (See SEITZ page 4)



(SEITZ from page 3)

years, by conservative estimates, we will reach a filing rate in excess of 2,000 appeals a year." "Thus," he concluded, "the rate of appeals will have doubled within eight years."

He recognized the valuable contribution which the work of the Magistrates, the Bankruptcy Judges, the Clerks of Court and other supporting personnel have made to the total operation of the Courts of the Circuit, and commended the magnificent manner in which the district courts have met the challenge of the Speedy Trial Act.

However, the Chief Judge noted that, "a high price is being paid for the Congressionally imposed emphasis on fixed time periods for the disposition of criminal cases. That price is an ominous delay in trying and deciding civil cases. This can only get worse unless substantial additional judicial and supporting personnel are provided by Congress."

He said that the impact of the Speedy Trial Act will have serious implications in several areas. "By turning the district courts into criminal courts we will be making a stepchild of civil litigation. By limiting the types of cases being processed we will reduce the attractiveness of a district court judgeship to many qualified attorneys because of the narrowing of the subject matters handled."

The Chief Judge pointed out that there was a serious problem because of the insufficient number of court reporters. "The shortage of reporters not only interferes with the productivity of the active judges but also prevents full utilization of the considerable talents of senior district judges and federal magistrates."



Chief Judge Irving R. Kaufman

### CHIEF JUDGE KAUFMAN ADDRESSES CA-2

Chief Judge Irving R. Kaufman this month presented his State of the Circuit Address to the Second Circuit Judicial Conference meeting in Buck Hill Falls, Pennsylvania.

Chief Judge Kaufman identified four areas of public dissatisfaction with the performance of the courts: growing backlogs of unresolved cases or appeals; undue delay in the administration of justice; perceived failures of the criminal justice system; and inadequate legal representation.

The Chief Judge then expanded on just why there is public dissatisfaction in these areas, and outlined how the judiciary of the Second Circuit is responding, stating that, "The courts can demonstrate a solid record of achievement and sensitivity to these criticisms, and point to initiation of new programs or techniques to deal with these troubling problems."

**Backlog—Appellate Cases.** The Second Circuit has no backlog of appeals. Terminations totaled 1,947 appeals, though the number of appeals docketed increased more than 9%. Pending cases fell to the lowest number since 1972, despite a 44% increase in filings since that year. The productivity per judge is 50% greater than in 1970; the judges are outpacing the growing rate of filings.

**Backlog—District Cases.** There is a steady trend toward increased per judge productivity. Productivity per

district judgeship is 25% above the level of the Circuit a decade ago. More pending cases than can be disposed of in one year has caused some backlog; but the backlog has been reduced by almost 15% from the high point reached in 1972. Regarding the criminal docket more cases were terminated than were filed in fiscal year 1976; the total of pending criminal cases is 5% lower than the corresponding figure five years ago. On the civil docket, although there has been a growth in filings, terminations have increased 14%, 10,614 cases during fiscal year 1976.

**Delay.** The median time from notice of appeal to termination, 4.4 months, is the best in the nation and is shorter than the 5-months goal set by the ABA Standards for Appellate Courts. In the District Courts, the judges are extending special efforts to insure that their Speedy Trial Plan is implemented.

**The Criminal Justice System.** The Circuit's answers to public criticism in this area has been a concerted effort to eliminate disparities in sentencing meted out to similar defendants. The Circuit's Sentencing Committee has made excellent suggestions for sentencing procedures.

**Legal Representation.** The Circuit's answer to public criticism of the bar and the contention that, "the quality of justice is linked almost inextricably to the size of the fee", is a continuation of the study of the Advisory Committee on admissions to practice. The Court of Appeals has adopted its own rule of admission aimed at improving advocacy on the appellate level, and some of the District Courts have adopted local rules proposed by this Committee. Judge Kaufman called on the members of the legal profession to give as much of their time and talent as possible for public interest legal services, to assist those unable to pay high fees and to improve judicial administration generally by joining efforts of bar associations and local committees. [A full text of the speech is available through the FJC Information Service.]

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#### Co-editors:

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



## NATIONAL DOCUMENT COMMISSION FORMED

Congress has created the National Study Commission on Records and Documents of Federal Officials with the objective of studying the problems and questions "with respect to the control, disposition, and preservation of records and documents produced by or on behalf of federal officials, with a view toward the development of appropriate legislative recommendations and other recommendations regarding appropriate rules and procedures with respect to such control, disposition, and preservation."

The Commission is composed of 7 members including representatives of Congress, the Executive Office of the President, the Departments of State, Justice and Defense, the Administrator of GSA and the Librarian of Congress.

The Judiciary is represented by Judge J. Edward Lumbard, Jr. (CA-9). The Commission's Chairman is former Attorney General Herbert Brownell.

The Commission recently developed its research plan for the various government officials including members of the Supreme Court and all federal judges, clerks of federal courts and other federal court personnel. Three questions concerning the ownership and control of judges' papers were posed by the Commission:

- Should a member of the judiciary be required to deposit his/her papers in a federal depository or should he/she be given the option of placing them in a non-federal institution, such as a university library or state historical society?
- Would papers of a member of the judiciary be accessioned on an ongoing basis, at set periods, or would this be done only when a judge left the court?
- Would the papers be appraised for permanent preservation in a manner similar to the appraisal of executive agency records?

Judge Lumbard has recently circulated a questionnaire to all federal judges, and other officials in the Judicial Branch to get their views on certain matters. Information from the questionnaire should be of assistance to the Commission in determining what plans the judges may have for the disposition of their papers, the kinds of papers they have on hand, and restrictions they may want to impose on the use of certain records.




## SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES HELD AT FJC

The largest seminar yet sponsored for newly appointed district judges was held at the Center during September.

Thirty-five judges gathered in the Tom C. Clark Conference Room on September 13th for five and a half days of concentrated programs.

As in the past, the presentations were made by the federal judges who have significant experience on the bench. These tenured judges outlined not only recommended procedures for disposing of heavy caseloads, but also gave the new judges some advice on how to avoid problems which could arise in their courts.

In addition, special presentations were made by the Director and other officials of the Administrative Office and the Federal Judicial Center, members of the Board of Parole and the Director of the Bureau of Prisons.

One of the highlights of the seminar was the formal dinner at the Supreme Court on Thursday evening. In the absence of The Chief Justice, who was out of the country, Mr. Justice Stevens and Mrs. Stevens hosted the dinner and addressed the group. The Justice expressed an understanding based on personal experience of the problems facing the federal courts these days, but he also had encouraging words for the judges that bespoke the enormous satisfaction to be had from serving in the Judicial Branch. 

(A.O. from page 1)

Trial Act which sets overall time limits for the trial and disposition of criminal cases. The overall workload of United States magistrates continued to increase in most areas. The more time-consuming "additional duties" performed by magistrates under authority of Title 28, United States Code, section 636(b) increased by nearly 13 percent, from 67,230 to 75,894. The volume of such proceedings, moreover, was 26 percent above the 60,072 conducted during the fiscal year 1974 and 47 percent above the 51,517 conducted during the fiscal year 1973, the first year of nationwide operation of the magistrates system.

**Bankruptcy Administration.** In the 12 months ending June 30, 1976, 246,549 persons or businesses filed petitions for relief under the various sections of the Bankruptcy Act. This is the second largest number of filings under the Act, the largest coming in fiscal year 1975 when 254,484 cases were filed. The current year's filings represent a decrease of 7,935 cases or 3.1 percent.

The number of business bankruptcies in 1975 reached an all-time high. The 35,201 business cases represent an increase of 16.8 percent, or 5,071 cases over 1975. It is significant that in the past six years the percent of business cases to total filed has continued to increase. The 14.3 percentage is the greatest proportion of business cases to total filings since 1958. The business cases shown for 1976 include 1,045 involuntary petitions. While the number of non-business cases filed in 1976 declined by 13,006 cases, it still represents the second largest number of cases in this category ever filed.

**Federal Probation Service.** There was a minor decrease of 1.5 percent in the number of persons received for supervision by the Federal Probation Service during 1976, as criminal filings declined and criminal dispositions remained at the previous year's level. There was a decline of 1.6 percent in new court probationers, and a decline in both parolees (down 20.3 percent) and



mandatory releases (down 19.6 percent) received from federal correctional institutions. Increases of 9.7 percent in persons placed on probation by the United States magistrates and of 49.7 percent in the number of persons placed on deferred prosecution helped to offset the decline in court probation and institutional releases to supervision.

**Criminal Justice Act.** During the year ending June 30, 1976, operating with a budget of \$19,046,000, an estimated 48,000 defendants received appointed counsel under the Criminal Justice Act. Of this total, 28,532 were represented by private panel attorneys and 19,468 by defender organizations.

As in previous years, the rise in cases handled by defender organizations is partially due to the increase in the number of such organizations, a fact which makes comparisons difficult. By the end of June 1976, there were 22 federal public defender offices. Community defender organizations numbered eight in 1976.

**Juror Usage.** The district courts, while maintaining a good record for the utilization of petit jurors, recorded a slight increase in the national Juror Usage Index (JUI) from a JUI of 19.32 in fiscal year 1975 to the JUI of 19.73 recorded this past year. This means that in the year ending June 30, 1976, approximately 20 jurors were required for conducting each jury trial day. In the same period, 592,594 jurors were called and available for jury service, an increase of 8.4 percent over the 546,627 jurors called in fiscal year 1975. Correspondingly, the number of jury trial days increased by 6.1 percent, from 28,293 jury trial days in fiscal year 1975 to 30,032 days in the 12 months ending June 30, 1976.

(F.J.C. from page 1)

reporters in the federal courts.

Three reports released during the period covered by the report were:

(1) The District Court Studies Report, issued in June, the first such report summarizing overall findings from the five metropolitan

courts studied;

(2) A tentative report of the special Section 1983 Committee, which outlines the views of the committee and contains recommended procedures for handling prisoner civil rights cases in the federal courts. [The report is called "tentative" because the Committee will study the procedures and continue to monitor the impact of its recommendations.] and

(3) A report listing and annotating Priorities for the Handling of Litigation in the United States District Courts.

Some other major activities of the Center were:

- Participation in the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, a conference co-sponsored by the Judicial Conference of the United States, the Conference of Chief Justices, and the American Bar Association.

- A continuation of the Conferences of Metropolitan Chief Judges which are meetings of the twenty-four largest federal district courts.

- A continuation of the past practice of hosting the Conference of Circuit Chief Judges after each session of the Judicial Conference of the United States.

- Cosponsoring, with the American Bar Association's Conference of Federal Trial Judges, workshops for the federal district judges. This year's emphasis was on class actions and the new Federal Rules of Civil Procedure.

- In conjunction with the Administrative Office, sponsoring regional conferences for members of district planning groups to assist with the implementation of the Speedy Trial Act. Also, in cooperation with the Administrative Office reports were made for the district courts to assist the judges and the reporters for the courts to identify and evaluate problems the courts might have in meeting standards set out in the Act.

- Working in conjunction with the Judicial Conference Commission on the Operation of the Jury System and the Administrative Office, the Center developed a new system for data gathering which will facili-

tate the courts' responsibility to assure that federal juries are representative of the communities in which the courts sit. In addition, the Federal Judicial Center has contracted for the development of a computerized jury selection, utilization and payment system which is adaptable to all United States District Courts.

- Planning and sponsoring a Sentencing Institute for the judges of the Sixth and Ninth Circuits. The Center also continued its work with the judges of the Second Circuit to explore ways in which variations in sentencing practices might be reduced.

During the 1976 Fiscal Year the COURTRAN network was established, the first COURTRAN time-sharing computer system being established in the United States Courthouse in the District of Columbia. The software for the criminal case application was developed and pilot operation commenced in six district courts. Two additional computer systems to support the expansion of the COURTRAN system were selected and are scheduled to be installed in February 1977.

The Federal Courts Library Study started in January, will produce recommendations for a model library system for the federal courts, elimination of unnecessary duplication of holdings in circuit, district and in-chambers libraries, and standards for personnel to staff the libraries.

The Division of Continuing Education and Training reached a new high in the number of seminars, conferences, and workshops held for circuit and district judges, bankruptcy judges, magistrates, probation officers and federal public defenders. Also continued were meetings for supporting personnel such as pretrial services officers, clerks and deputy clerks of court and circuit executives.

Judge Hoffman, in transmitting the report to the Chief Justice and the members of the Judicial Conference, pledged his continuing efforts to support the work of the Judicial Conference and the entire federal judiciary.



## BILL INTRODUCED TO ESTABLISH VOTING LISTS AS KEY JUROR SOURCE

The Administrative Office, acting at the direction of the Judicial Conference, has transmitted a draft Bill which would amend the Jury Selection and Service Act of 1968 to establish a presumption that the use of voter registration lists as a source of names to be selected for jury service is consistent with the policies of the Act.

At the present time, §1863 (b)(2) of Title 28 U.S.C. specifies that both grand and petit jurors will be selected at random from voter registration lists or lists of actual voters and that:

"The plan shall prescribe some other source or sources of names in addition to voter lists where necessary to foster the policy and protect the rights secured by sections 1861 and 1862 of this Title."

The bill which the Administrative Office submitted to Congress would amend this provision to (1) establish the presumption that those jurors selected from voters registration lists or lists of actual voters to affirmatively represent a fair cross-section of the community in the district or division and (2) require the district court to find that voter lists do not represent such a fair cross section before it may prescribe any other source or sources of juror names. Here is the text of the Bill:

### A BILL

To amend the Jury Selection and Service Act of 1968, as amended, to establish a presumption that the use of voter registration lists as the source of juror names is consistent with the policies of community cross-sectionality and nondiscrimination in the selection of Federal juries.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1863(b)(2) of title 28, United States Code, is amended to read as follows:

"(b) Among other things, such plan shall—

(2) specify that the names of prospective jurors shall be selected from the voter registration lists or lists of actual voters of the political subdivisions within the district or division. There is a presumption that jurors so selected represent a fair cross section of the community in the district or division wherein the court convenes. The plan may prescribe some other sources of names in addition to voter lists where the court finds that voter lists do not represent a fair cross section of the community."

## MANAGEMENT REVIEW COMPLETES FIRST YEAR

The Division of Management Review of the Administrative Office, established by the Director in May 1975, has completed its first full year of operation. It is now staffed by an experienced nucleus of attorneys, auditor-accountants and clerical employees. The new Division plans to accelerate reviewing court offices beginning in the fall.

Although the Division has devoted most of its time during the first year to organizational activities and recruiting and training personnel, it has completed reviewing operations in the nine district courts located in five circuits. Formal reports on five district courts have been submitted to the judges of the courts examined and to the Judicial Councils of the respective circuits.

Some of the principal matters reviewed by the Division are these:

- Audit of all financial records.
- Compliance with statutory requirements, rules and Judicial Conference resolutions in the operation of court offices.
- Adequacy of internal management controls.
- Adequacy of supporting services provided to the courts by the various divisions in the Administrative Office.

The recommendations of the Division are designed to improve the efficiency of operations and identify changes needed to bring about greater effectiveness. Upon the request of the court, special attention is given to particular phases of court operations that present unusual problems.

## MORE FEDERAL COURTS USING SIX MEMBER JURIES

According to the General Counsel of the Administrative Office of the United States Courts, 82 out of the 94 federal district courts have now changed their local rules to allow the use of six member juries in civil cases.

The increase is attributed, in part, to the decision of the Supreme Court upholding the use of six member juries in civil cases as constitutional. [*Colgrove v. Battin*, 413 U.S. 149 (1973).]

## COMMITTEE ON ADMISSION STANDARDS MEETS

The Chief Justice this month announced the formation of a 24-member committee to study and report on proposed standards for admission to practice in the federal courts.

The committee held its initial meeting September 22nd at the call of the Chairman, Chief Judge Edward J. Devitt (Dist. Minn.). This meeting was devoted to general discussions relating to methodology to be adopted in the study, and the appointment of subcommittees to carry out specific responsibilities. It was agreed that the views of organizations such as the American Bar Association, the Federal Bar Association and the National Bar Association would be invited.

Chief Judge Devitt, in his opening statement to the committee, said that the mission of the committee is to "get the facts, weigh the evidence and make a judgment as to the best practical way to improve the level of advocacy," in the federal courts.

The next meeting of the committee will be held December 9th and 10th in San Antonio, Texas.

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

### JUDICIAL SALARIES

On September 29th the President ordered cost-of-living salary increases for most federal workers. The increases average 4.83 percent and will be effective as of October 1 (or the first pay period thereafter).

The increase will not apply to the salaries of federal judges, however, since Congress acted to freeze federal judicial as well as congressional and executive salaries for those political appointees now earning \$37,800 or more.

### FUTURE SUMMARY

Because of the extremely large number of actions which have been taken, both in the Senate and the House of Representatives, we have not attempted to describe in detail any of the bills in this issue. In the next issue of *The Third Branch*, we will be able to provide a wrap-up of all the Congressional action which has been completed in the Second Session of the 94th Congress.



# DOJ calendar

Sept. 22 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, Washington, D.C.

Sept. 27-Oct. 1 Rational Behavior Therapy Workshop for Probation Officers, Savannah, Ga.

Oct. 13-15 Seminar for Bankruptcy Chief Clerks, St. Louis, Mo.

Oct. 18-20 Advanced Seminar for Assistant Public Defenders, San Antonio, Texas

Oct. 22-23 Workshop for District Court Judges, Phoenix, Ariz.

Oct. 27-29 Seminar for Federal Public Defenders' Investigators, Washington, D.C.

Oct. 28-29 In Court Management Training Institute, Portland, Ore.

Oct. 28-30 Conference for Federal Appellate Judges, Phoenix, Ariz.

Nov. 3-5 In Court Management Training Institute, Memphis, Tenn.

Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.

Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.

Nov. 15-19 Advanced Seminar for Probation Officers, Louisville, Ky.

Nov. 17-19 Seminar for Bankruptcy Judges, San Antonio, Texas

Nov. 29-Dec. 1 Seminar for Circuit Staff Attorneys, Washington, D.C.

# PERSONNEL

## Nominations

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Aug. 26

Howard G. Munson, U.S. District Judge, N.D.N.Y., Aug. 26

## Confirmations

John T. Copenhaver, Jr., U.S. District Judge, S.D.W.Va., Sept. 1

Glen M. Williams, U.S. District Judge, W.D.Va., Sept. 17

Sydney M. Aronovitz, U.S. District Judge, S.D.Fla., Sept. 17

W. Eugene Davis, U.S. District Judge, W.D.La., Sept. 2

## Appointments

Marion J. Callister, U.S. District Judge, D.Ida., Sept. 2

## Elevations

William J. Nealon, Jr., Chief Judge, U.S. District Court, M.D.Pa., Aug. 23

Fred M. Winner, Chief Judge, U.S. District Court, D.Colo., Sept. 1

Kenneth K. Hall, U.S. Circuit Judge, 4th Cir., Sept. 1

Peter T. Fay, U.S. Circuit Judge, 5th Cir., Sept. 17

## Deaths

Omer Poos, U.S. District Judge, S.D.Ill., Aug. 11

C. Nils Tavares, U.S. District Judge, D.Hawaii, Aug. 3  
Wallace S. Gourley, U.S. District Judge, W.D. Penn., Sept. 23

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## THE THIRD BRANCH

VOL. 8, NO. 9 SEPTEMBER 1976

## THE FEDERAL JUDICIAL CENTER

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## PRESIDENT SIGNS JUDICIAL SURVIVORS ANNUITIES BILL

On October 19 President Ford signed the Judicial Survivors Annuity bill which, in effect, completely overhauls the present system.

The provisions of the bill apply to all judges and justices in the federal judicial system.

Here are the key benefits included in the bill:

- The existing program is fully incorporated into a completely restructured statute conferring improved benefits and clarifying existing benefits. All improvements are retroactively conferred upon existing annuitants and all "vested" rights now held by participating judges are preserved.

- The existing program's "fund efficiency"—estimated to be \$8.5 million in September of 1975—will be eliminated by a single deposit of an appropriate amount from the general treasury.

- All "matching funds" for the new program are expressly authorized by a subsection of the statute.

- All annuities payable to dependent children are extended beyond age 18 to age 22 if the children are full-time students.

- All widowers are as eligible for annuities as widows, thus opening the program to women judges.

- The period of marriage required as a condition precedent to eligibility for an annuity is reduced from two years to one year.

- All widows and widowers are eligible for an annuity without regard to their ages or the existence of dependent children.

- The minimum required period of contribution is reduced from five years to eighteen months.

- Requirements governing deposits for prior service are changed enabling a judge to qualify his dependents for immediate coverage by the payment of one installment covering his last eighteen months of prior service.

- Annuity amounts for dependent children are increased fourfold, to the level now paid to dependent children under the Civil Service Retirement program.

- All annuities to widows and widowers are based upon a new "average annual salary" factor—the "high three years" of earnings rather than the "last five years" of earnings.

- The number of years of service which would qualify as "creditable" and thus be used to compute benefits—is increased from 30 to 32, the same number of years permitted for credit under the Civil Service program.

- Retroactive "cost-of-living" increases will be paid to all existing widows to compensate for decreases in purchasing power since the commencement of their annuities.

- Prospective "cost-of-living" (See ANNUITIES page 2)

## POUND CONFERENCE TASK FORCE RELEASES RECOMMENDATIONS

The seven-member Task Force appointed to distill suggestions made at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice recently submitted to the ABA Board of Governors a comprehensive report on the Conference.

The meeting, held last April, was jointly sponsored by the American Bar Association, the Conference of Chief Justices and the Judicial Conference of the United States.

The conferees were asked to make suggestions for long-range planning in the judicial administration area, not only to better the delivery of justice in this country, but also to assure that the courts are able to cope with the problems which might surface in the future, especially those problems exacerbated by consistently growing caseloads.

The report was written to memorialize the discussions and to assure that those concepts considered meritorious would be referred to the organizations best able to further evaluate and, if deemed appropriate, implement them. At the outset it is made clear that specific proposals included in the report are meant to cover both civil and criminal cases and state and federal courts.

Some proposals which are included in the report are:

(See CONFERENCE page 2)



(ANNUITIES from page 1)

increases will also be conferred upon those same existing widows until their deaths.

- Prospective "cost-of-living" increases will also be conferred upon all widows and widowers whose annuities would commence after the date of enactment.

The provisions of the bill will become effective on January 1, 1977.



(CONFERENCE from page 1)

- That the ABA stimulate research and experimentation designed to develop criteria to identify disputes most likely to profit from fact-finding and other alternative mechanisms of dispute processing.

- That the Conference of Chief Justices consider whether decriminalization of victimless crimes should be referred to state agencies for study.

- That a common effort be made to provide solutions to the problems of abuses in the use of pretrial

(See CONFERENCE page 7)

### CA-3 NAMES SENIOR STAFF ATTORNEY

Chief Judge Collins J. Seitz announced the appointment of Louise D. Jacobs as the Senior Staff Attorney for the Third Circuit. In this new career position, she will supervise a group of staff attorneys handling some aspects of pro se litigation as well as developing programs to provide additional legal assistance to the courts.

Mrs. Jacobs has been the Court Administrator for a New Jersey Superior Court in which she assisted the judge in that court in administering a thirty-judge trial court with 70 municipal courts of lesser jurisdiction. She is a graduate of the Institute for Court Management and holds a J.D. from Seton Hall Law School.



### JUDICIAL TRAVEL ALLOWANCES INCREASED

The Director of the A.O. authorized, effective October 4, 1976, an increase of mileage allowances for privately-owned automobile travel from 15¢ to 15½¢ per mile.

Such travel by Circuit and District Judges within the boundaries of their respective circuit or district was authorized generally and shall not be subject to any restrictions. Reimbursement of travel by privately-owned automobile outside a judge's Circuit or District shall be limited to the constructive cost of first-class air travel including the per diem or subsistence expenses that would have been allowable and the usual transportation service to and from airline terminals.

Payments on a mileage basis would not be restricted if common mileage standards are inadequate or if travel by common mileage would seriously interfere with the performance of official business.

For all officers and employees of the Judiciary except justices and judges an increase in their per diem allowances from \$33 to \$35 per day was authorized with the option of claiming actual expenses of subsistence within specific dollar limitations at certain designated high-rate geographic areas. (There were no changes in subsistence allowances for judges since they are currently being reimbursed at the maximum rate authorized by law.)

The maximum actual daily expense allowance for official travel in Alaska, Hawaii, Puerto Rico, the Canal Zone, and U.S. possessions shall be the per diem rate prescribed for the location plus \$21.

For travel of 24 hours or less when a night's lodging is not required, the per diem allowance would be \$16. No claims for subsistence will be allowed when the travel period is ten hours or less during the same calendar day except when the travel period is 6 hours or more and begins before 6:00 a.m. or terminates after 8:00 p.m.

Officers and employees traveling on official business to a locality designated below as a high-rate geographic area have the option of claiming actual and necessary expenses of subsistence not to exceed the maximum daily allowance authorized for each area in lieu of the per diem allowance of \$35. Here are the high-rate localities: Boston (\$49), Chicago (\$43), Los Angeles (\$40), Newark (\$42), New York (\$50), Philadelphia (\$46), San Francisco and Oakland (\$41), and Washington, D.C. (\$50).

With respect to travel by probation officers, the Director of the A.O. determined that the use of their privately-owned automobiles in the performance of official duties is advantageous to the Government and, therefore, their claims on a mileage basis shall not be restricted.

### LIBRARY STUDY NEARING COMPLETION

Raymond M. Taylor, Project Director for the Federal Judicial Center Library Study, reports that several aspects of the project are now completed. The balance of the work will be finished soon and a comprehensive report will be submitted by next January.

In making his annual report to the Judicial Conference, Judge Walter E. Hoffman, Federal Judicial Center Director, made specific reference to the study and expressed particular appreciation for the cooperation of the judges and their supporting personnel in completing book inventory forms. Almost 80% of the inventories have now been received.

The reports on the inventories are being computerized with numbers of holdings to be reported on the basis of district-by-district, circuit-by-circuit, building-by-building and judge-by-judge.

It is estimated approximately three million books are in the federal courts' libraries.



## **SPEEDY TRIAL REPORT RELEASED**

### **District Plans Adopted**

Nineteen federal district courts have adopted plans that will place into effect immediately the final time limitations which are required under the Speedy Trial Act to be reached by July 1, 1979, according to a September 30 report of the Director of the Administrative Office to Congress on the implementation of Title I and Title II of the Speedy Trial Act of 1974.

Of the 19 courts opting for the most stringent time limits at this time, six have large caseloads.

An additional 25 districts have adopted plans which provide for either shorter time limits during the transitional period than those required by the Act, or for acceleration of the date on which the required 1979 time limits become effective.

The remaining 50 districts have adopted plans allowing for the full time intervals permitted by the Act for the transitional period.

The Act required that each district submit a Speedy Trial plan to its Circuit Council for approval and all district plans became effective as of July 1, 1976.

### **Time Limits**

The final time limits required to be in effect by July 1, 1979 would assure that a criminal defendant be indicted within 30 days of arrest, arraigned within 10 days of indictment, and tried within 60 days following arraignment.

The computation of these time intervals is subject to certain periods of delay that may be excluded. These exclusions are set out in the Act. [See Title 18, U.S.C. 3161(h)].

To achieve this final objective, the Act provides for a three-year phasing-in period during which less demanding time intervals are permitted.

During the first year, beginning July 1, 1976, each court must provide for the disposition of criminal cases on a schedule which will not exceed 60 days from arrest to indictment, 10 days from

indictment to arraignment, and 180 days from arraignment to trial.

During the second year, beginning July 1, 1977, the time limits tighten to 45 days from arrest to indictment and 120 days from arraignment to trial.

Beginning July 1, 1978, the third year of the phasing-in period will require that the defendant be indicted within 35 days of arrest and tried within 80 days of arraignment.

The narrow 10-day period from indictment to arraignment which remains constant during the transitional period and in the final time limits has been the source of logistical problems for a number of districts.

Other immediate effects noted in the report are an increase in grand jury sessions and a greater reliance upon the U.S. Magistrates to handle particular responsibilities in criminal cases.

Though the report points out that it is too early to make firm recommendations, the Director of the Administrative Office has indicated urgent matters requiring prompt congressional action. Among these are:

- The authorization of the additional judgeship positions for the U.S. District Courts recommended by the Judicial Conference of the United States;

- Passage of the bill which would make the excludable time provisions in Section 3161(h) of the Speedy Trial Act applicable to the special "interim" time limits for defendants in custody;

- The enactment into law of the amendments contained in S.539 relative to the Jury Selection and Service Act.

Congress has acted to expand and clarify the duties of U.S. Magistrates through passage of S.1283 which was signed October 21 by the President.

In summarizing Part One of the report, the Director of the Administrative Office points out that, "Since the statutorily imposed procedural time limits did not become effective until July 1, 1976, it is not possible to report on their impact on the operations of the District

Courts. However, the judiciary is taking, and will continue to take, all steps necessary to assure a speedy trial for every defendant charged with crime in a United States district court."



## **SCIENCE COURT DISCUSSION HELD**

More than 250 scientists, engineers, government officials, businessmen and lawyers gathered for a two-day colloquium on the proposed "Science Court" September 20-21 in Leesburg, Va.

According to proponents, the Science Court would be an impartial quasi-judicial body which could, at the request of policy-makers at various levels, be called upon to weigh all the scientific facts available regarding a prominent controversy.

Examples of the type of issues that might be placed before the Science Court for a sifting of conflicting data and opinions would be the controversies surrounding nuclear reaction safety, the dangers of pesticides and food additives, and the impact of fluorocarbons on the earth's ozone layer.

Opponents of the proposed "Court" see it as just another governmental advisory body with potentials for additional delay and a stifling of creative research.

Among the notable figures in attendance were Secretary of Commerce Elliot L. Richardson, Dr. H. Guyford Stever, Science Advisor to President Ford, and Dr. Margaret Mead, noted anthropologist and past president of the American Association for the Advancement of Science.

The program was led by Dr. Arthur Kantrowitz, Chairman of Avco Everett Research Laboratory, who has been a strong advocate of the Science Court.



(See related story on page 7)

RESEARCH AND DEVELOPMENT



## HABEAS CORPUS RULES CHANGED

On April 26, 1976 the Supreme Court transmitted to Congress rules and forms governing proceedings under §§2254 and 2255 of Title 28.

By P.L. 94-349, enacted on July 8, 1976, the Congress provided that these rules governing proceedings under §§2254 and 2255 should not take effect until 30 days after the adjournment sine die of the 94th Congress, or until and to the extent approved by act of Congress, whichever date was earlier.

In August and September of this year, the House Judiciary Committee held hearings on the merits of the proposed rules for §§2254 and 2255 proceedings. As a result of these hearings the Congress made several amendments in the proposed rules.

These amendments were enacted into law by P.L. 94-426, which was signed by President Ford on September 28, 1976. This act amending the habeas corpus rules provides that the rules are to take effect as amended with respect to petitions under §2254 and motions under §2255 of Title 28 that are filed on or after February 1, 1977.

As amended, the rules promulgated to govern the procedure in United States district courts on application under 28 U.S.C. §2254 apply to petitions filed by a person in custody pursuant to a judgment of a state court for a determination that such custody is in violation of the Constitution, laws, or treaties of the United States.

A person in custody pursuant to a judgment of either a state or federal court, who makes application for a determination that custody to which he may be subject in the future under the judgment of a state court will be in violation of the Constitution, laws, or treaties of the United States, is also entitled to petition for relief.

The rules governing §2255 proceedings apply to motions filed by a person in custody pursuant to a judgment of a federal district court for a determination that the judgment was imposed in violation

of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such judgment, or that the sentence was in excess of the maximum authorized by law, or was otherwise subject to collateral attack.

In addition, a person in custody pursuant to a judgment of a state or other federal court and subject to future custody under a judgment of the district court may file a motion in that district court for determination that such future custody will be in violation of the Constitution and laws of the United States, or otherwise is illegal.

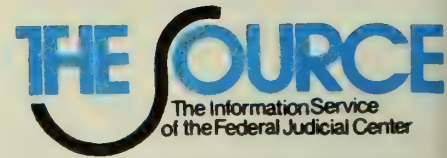
Both the rules governing §2254 and §2255 proceedings detail the procedures by which such petitions or motions shall be filed with the clerks of the federal district courts and how these petitions or motions will be processed.

In the near future these rules as amended will be distributed to the bench and bar as requested by the House Judiciary Committee. At the same time that these rules are distributed to the field the forms to be used in conjunction therewith will also be distributed.

In addition to the amendments made to the so-called habeas corpus rules by P.L. 94-426, other amendments were made to these rules as part of a piece of legislation that was passed at the end of the 94th Congress dealing with the jurisdiction of federal magistrates.

Senate bill 1283 amends rule 8(b) of both the §2254 and §2255 rules by providing that the court is authorized to delegate responsibility to federal magistrates to conduct evidentiary hearings in §2254 and §2255 proceedings.

The court may also require the magistrate to make proposed findings of fact and recommendations as to the disposition of the §2254 petitions and §2255 motions. Senate bill 1283 makes no change in the effective date of the §2254 and §2255 rules which remains February 1, 1977.



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# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

## Judicial Survivors Annuities

**Amendments Pass.** The Judicial Survivor's Annuity Bill, S. 12, achieved final passage on October 1st, with a House amendment providing that a judge may revoke his or her election to participate in that program within 180 days after the effective date of the law, upon the receipt of a writing filed with the Director of the Administrative Office. S. 12 will become effective on the first day of the third month following the month in which it was enacted; therefore the effective date will be January 1, 1977.

(See story pg. 1.)

**Territorial Judges.** S. 14, a bill which would provide for a cost-of-living adjustment factor for the salaries of retired territorial judges, also passed and was signed into law on October 11 (P.L. 94-470).

## Judicial Review of Agency

**Action.** S. 800, with respect to procedure for judicial review of certain administrative agency actions has passed both houses of the Congress and is awaiting Presidential action. As passed, the bill would eliminate the defense of sovereign immunity in federal court actions for a specific relief in which unlawful action by a federal agency or officer is unlawful. Secondly, it would abolish the \$10,000 jurisdictional amount where the jurisdiction is invoked on the ground that the matter arises under federal law and the suit is against the United States, an agency thereof, or any officer or employee acting in his official capacity. Thirdly, the bill would remedy certain technical problems concerning the naming of the United States and its agencies or employees as parties defendant and amend the section concerning venue of actions against federal officers and agencies. The bill was referred to the Judicial Conference for comment and it concluded that

it would have no substantial impact on the caseload in the federal courts.

## Use of Unsworn Declarations.

H.R. 15531 amends the various statutes providing for oaths and affirmations to permit the use of unsworn declarations as evidence in federal proceedings under penalty of perjury. The various perjury statutes are also amended to provide for the imposition of the penalty.

## Jurisdiction of United States

**Magistrates.** The bill which incorporates in large part the proposals of the Judicial Conference relating to clarification and extension of the jurisdiction of the United States Magistrates was passed in the closing days of the 94th Congress and is awaiting Presidential action. Among the additional duties which can be assigned to a magistrate are (1) any pretrial matter may be assigned to a magistrate to be heard and determined by him. In addition, the magistrate shall have authority not only to hear the pretrial matter, but also to enter an order determining the issue raised by the motion or proceedings.

The magistrate's determination is intended to be final unless a judge of the court exercises his authority to reconsider the determination. Furthermore, it is made clear that the judge of the court has the ultimate prerogative to review and reconsider any motion or matter where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(2) Dispositive motions are excepted from the magistrate's power under subparagraph (1) to hear and determine pretrial matters. These would be a motion for injunctive relief, a motion for judgment on the pleadings, summary judgment, dismissal or quashing of an indictment by the defendant, motion to suppress evidence in a criminal case, motion to dismiss for failure to state a claim upon which relief can be granted, and a motion to involuntarily dismiss an action.

However, the magistrate would be able to hear such motions and

submit proposed findings and recommendations to a judge for ultimate disposition. Matters relating to habeas corpus and 2255 proceedings may also be referred to a magistrate and the proposed findings and his recommendations would be presented to the judge for disposition. Copies of proposed findings and recommendations must be mailed to all parties who would have time to make their objections. These would be reviewed and acted upon by the district judge.

(3) The magistrate may be appointed as a special master under rule 53 with respect to the matters of dispositive motions in which the magistrate would make the findings and recommendations. The judge of the court does make a de novo determination of those portions of the report or specific proposed findings or recommendations to which objection is made. This does not, according to the Committees and the managers on the House floor, require that the judge actually conduct a new hearing on contested issues. The district court might well listen to a tape recording of the evidence and proceedings and might call for and receive additional evidence if it is needed.

## Civil Rights Attorneys' Fees

**Awards Act.** Both Houses have passed and the President has signed S. 2278, which authorizes the court in civil rights proceedings and in certain proceedings under the Internal Revenue Code to order the award of attorneys' fees to the prevailing party except for the United States.

**Grand Jury System.** The Senate Judiciary Committee Subcommittee on Constitutional Rights has initiated hearings on the subject of the operation of the grand jury system, including S. 3274, which would establish certain rules with respect to the appearance of witnesses before grand juries. Testimony was received from the representatives of the Office of the District Attorney of Los Angeles, the American Bar Association's

(See LEGISLATION page 6)



(LEGISLATION from page 5)  
Committee on the Grand Jury, and the National Association of Criminal Defense Lawyers. Each of the witnesses dealt with deficiencies in the present grand jury system. It is anticipated that in the next Congress a new bill will be introduced and further hearings will be held.

**National Court of Appeals.** Senator Burdick has announced that hearings will be held by the Judiciary Subcommittee on Improvements in Judicial Machinery on November 9 and 10 on the bills to establish a National Court of Appeals.

**Suits Against Foreign States.** H.R. 11315 has been passed by both Houses of Congress and is awaiting Presidential action. The legislation defines the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit, and in which execution may not be levied on their property.

**Magistrates Compensation.** S. 2923, which provides that full-time magistrates will receive the same compensation as referees in bankruptcy passed both Houses and was signed by the President on October 17, 1976.

**Copyright Revision.** S. 22 for the general revision of the copyright law, Title 17 of the United States Code, and for other purposes was passed by both Houses; the Conference report was received and approved and the bill was cleared for the President on September 30, 1976.

**Financial Disclosure.** H.R. 15, the Public Disclosure Lobbying Act of 1976, failed of passage due to the raising of certain parliamentary objections during the last days of the session. It is anticipated that a similar bill will be brought up in the 95th Congress.

**Antitrust.** H.R. 8532 to improve and facilitate the expeditious and effective enforcement of the antitrust laws was signed on September 30, 1976 (P.L. 94-435). Among other things it provides for the bringing of suits by states attorneys general.

One of its most significant provisions is an amendment to 28 U.S.C. §1407, adding a new subsection (h) which authorizes the Judicial Panel on Multidistrict Litigation to consolidate and transfer these cases under §4C of the Clayton Act for both pretrial and trial.

Also of significance is a provision of the LEAA authorizing legislation, S. 2212, which provides for grants to states attorneys general for the purpose of improving the antitrust enforcement capability of the state.

**Tax Reform.** The President signed the Tax Reform Act of 1976 on October 4 (P.L. 94-455). Two provisions which will substantially affect the caseload of the district courts are (1) providing for a taxpayer to intervene in or to preclude enforcement of an administrative summons directed to a third party recordkeeper and (2) a second provision which will provide for jurisdiction in the district courts over challenges to the reasonableness of jeopardy or termination assessments.

## NEW DRAFT RELEASED ON COMPLEX LITIGATION MANUAL

A tentative draft of the fourth revision of the Manual for Complex Litigation has now been circulated to all federal judges and various bar associations inviting comment.

The Manual is the product of a Board of Editors consisting of seven federal judges. Prior to releasing previous revisions, hearings were held to obtain the views of members of the bench and bar in addition to screening all written commentaries.

While the mailing was necessarily limited because of the number of copies available, comments and suggestions are invited from any member of the bar. All such material should be submitted by November 1, 1976 to: Robert Cahn, Executive Editor, Multidistrict Litigation Office, 1030 Executive Building, Washington, D.C. 20005.

## Complete Revision

### COPYRIGHT BILL ENACTED

An act effecting a general revision of the federal copyright law has been signed by the President [Act of October 19, 1976, P.L. No. 94-553, 90 Stat. 2541.] Originally introduced as S. 22, the majority of the provisions are effective January 1, 1978.

Those provision of the Act, to be codified at Title 17, United States Code, Chapter 8, establishing an independent Copyright Royalty Tribunal in the legislative branch, took effect upon enactment.

The basic function of the Tribunal is to determine the reasonableness of copyright royalty rates in those situations in which licensing by a copyright owner will be compulsory. No court shall have jurisdiction to review a final decision of the Tribunal except as provided in Section 810.

The Act also will give statutory sanction to the "fair use" doctrine as developed in *Williams and Wilkins Co. v. United States*, 48 F.2d 1345 (Ct. Cl. 1973), affirmed by an equally divided Court, 420 U.S. 376 (1975). Further, requirements will be placed upon any library which engages in reproduction of copyrighted materials. Guidance will be furnished to all librarians regarding restrictions and procedural requirements prior to the effective date of the Act by the General Counsel of the Administrative Office.

Finally, the Act defines a "work of the United States Government" as "a work prepared by an officer or employee of the United States Government as part of that person's official duties," and provides that no copyright may subsist in any such work. When such a work is incorporated in a publication entitled to copyright protection, a special statement must accompany the copyright notice.



CONFERENCE from page 2)  
 procedures with a view to appropriate action by state and federal courts.

- That procedural rules provide for sanctions for the willful filing of baseless or otherwise improper pleadings which contribute to delay and to increased expense of litigation. (Recommended for consideration is the so-called Michigan plan which calls for a panel to set a monetary evaluation when liability is not realistically in issue. The panel's findings are not binding but if a litigant fails to achieve a substantially more favorable result at trial, the litigant is subject to imposition of the costs of litigation, a mechanism which applies equally to all parties to the lawsuit.)

- That further study of class actions be made. The report states there is reason to believe that committees of the Judicial Conference of the United States will consider whether changes in the federal rules are desirable. A specific recommendation is included that the ABA give high priority to the studies of class actions with emphasis on the possibility that there should be an added measure of judicial control over attorney fees as well as the substitution of provisions which call for a litigant "opt-in" on the litigation rather than "opt-out". (The recommendation on the "opt-in" concept was not unanimously adopted by the Task Force.)

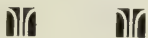
- That the American Bar Foundation, the Institute of Judicial Administration and the Federal Judicial Center be invited to undertake a thorough study and make recommendations on the proper scope of the right to jury trial in civil cases.

- That the Judicial Conference of the United States, the Judicial Administration Division of ABA and the Conference of Chief Justices consider whether it would be desirable to develop a mechanism designed to assure periodic legislative consideration of the need for new judgeships. The mechanism could call for a submission to the legislature of data on workloads,

population trends, including past experience and future projections, and a formula to be applied to such data to determine the number of judgeships warranted for each court; further, that there be a self-imposed legislative requirement that the legislature vote on new judgeships within a specified time after submission of such data.

- That the Conference of Chief Justices and state and local bar associations consider the endorsement of legislation which would eliminate diversity jurisdiction in the federal courts.

- That there be created a federal office for the collection of data relevant to judicial administration. Such an office would collect data, both state and federal, civil and criminal, and would be authorized to undertake special studies relevant to the administration of justice; that such an office work closely with the National Center for State Courts, the Federal Judicial Center, and other groups.



#### **A.O. DIRECTOR REPORTS INCREASED CASELOAD**

The Director of the A.O. of the U.S. Courts, Rowland F. Kirks, told the Judicial Conference late last month that there has been a substantial increase in the caseload of the federal courts during the year ending June 30, 1976.

Case filings in the courts of appeals rose almost 11 percent to a new all-time high of 18,408. Civil cases filed in district courts also increased by 11 percent to a record 140,189. However, criminal cases filed in the district courts declined by more than 5 percent.

Bankruptcy cases filed were 246,549 which represents a decrease of almost 8,000 cases from the record number of filings last year.

The decrease in criminal case filings during the year resulted partly from a change in case reporting procedures required under the Speedy Trial Act.

The increase in civil filings in both the courts of appeals as well as the district courts mean that individual caseloads of federal judges are now at an all-time high. Legislation which would increase the number of district judges has been pending in the Congress since



Chief Judge Markey

#### **FJC SCIENCE LIAISON COMMITTEE FORMED**

The FJC Board has appointed a Science Liaison Committee to advise the scientific community, when requested, in relation to fact finding processes and to learn whatever lessons of the scientist's world might be employed by the federal judiciary to improve the administration of justice.

The committee consists of Judge William C. Conner, of the Southern District of New York, Trial Judge Joseph V. Colaianni, of the Court of Claims, and Chief Judge Howard T. Markey, of the Court of Customs and Patent Appeals, (Chairman).

The first activity of the committee has been to inform itself regarding the "Science Court" proposed by a group of scientists. In general, the proposal is for a board of scientists employing an adversary process to arrive at more definitive scientific, non-value laden advice to government agencies. The conduct of one such process as an experiment was discussed during a Colloquium on September 19-21, 1976 at which the Liaison Committee and the Federal Judicial Center were represented.





# DOJ calendar

# PERSONNEL

## Appointments

John T. Copenhaver, Jr., U.S. District Judge, S.D.W.Va., Sept. 26.

Cecil F. Poole, U.S. District Judge, N.D.Calif., October 5.

## Elevation

Otto R. Skopil, Jr., Chief Judge, U.S. District Court, D.Oreg., Oct. 1.

## Confirmations

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Sept. 23.

Howard G. Munson, U.S. District Judge, N.D.N.Y., Sept. 23.

## Death

Walter Bruchhausen, U.S. District Judge, E.D.N.Y., Oct. 11.

- Nov. 3-5 Meeting of Executive Committee National Conference of Federal Trial Judges, San Antonio, Texas
- Nov. 3-5 In-Court Management Training Institute, Memphis, Tenn.
- Nov. 11-12 Workshop for District Court Judges, Chicago, Ill.
- Nov. 15-17 Workshop for Procurement and Property Management, Salt Lake City, Utah
- Nov. 15-19 Advanced Seminar for Probation Officers, Louisville, Kentucky
- Nov. 17-19 Seminar for Bankruptcy Judges, San Antonio, Texas
- Nov. 29-Dec. 1 Seminar for Staff Attorneys, Washington, D.C.
- Dec. 7-10 Seminar for Crisis Intervention for U.S. Probation Officers, Washington, D.C.
- Dec. 9-10 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, San Antonio, Texas
- Dec. 15-17 Seminar for Bankruptcy Judges, Ft. Lauderdale, Fla.

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts

## THE THIRD BRANCH

VOL. 8, NO. 10    OCTOBER 1976

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## Bulletin of the Federal Courts

VOL. 8, NO. 11

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NOVEMBER 1976

## Magistrates Powers Increased

On October 21st, when President Ford signed into law the Federal Magistrates Act, the U.S. magistrates were given a wide range of additional duties which may be delegated to them by the District Court to which they are assigned.

Generally, the new law will enable district judges to devote their time to the actual trial of cases rather than to various pretrial procedural duties.

The Magistrates Division of the Administrative Office has prepared a jurisdictional checklist of the duties which may be assigned to magistrates under the new law.

Here is a summary of some of the duties which may be delegated to a magistrate to hear and determine, subject to a subsequent right of appeal to a judge.

[A complete copy of the checklist is available from the Magistrates Division.]

### Criminal Proceedings

General supervision of the criminal calendar, including

calendar calls and motions to expedite or postpone the trial of cases.

- Hearing and deciding procedural and discovery motions.
- Hearing and deciding motions by the Government to dismiss an indictment or information without prejudice to further proceedings and any other motion or pretrial matter which is not specifically enumerated as an exception in 28 U.S.C. § 636(b) (1)(A).

(See MAGISTRATES, page 2)

## TAX REFORM ACT OF 1976 MAY AFFECT CASELOAD

A provision of significance to the caseload of the federal courts is Section 7609 recently added to the Tax Code by the Tax Reform Act of 1976, P.L. 94-455, approved October 4, 1976.

Section 7609 adds new procedural requirements wherein an administrative summons is served on a "third-party recordkeeper," a term which includes a bank or savings institution, a consumer reporting agency, a credit card system, a broker, an attorney, or an accountant.

If a recordkeeper is served with a summons under 26 U.S.C. § 7602 requiring the production of (or testimony with respect to) any portion of records made or kept of the business transactions or affairs

(See TAX, page 5)



Members of the Advisory Committee for the newly-instituted Graduate Training Program for U.S. Probation Officers who met recently with the Director of the F.J.C. are from left to right: Mr. William C. Hall, Probation Programs Specialist, Div. of Probation, The A.O. of the U.S. Courts; Mr. Donald L. Chamlee, Ass't Chief, Division of Probation, The A.O. of the U.S. Courts; Mr. James F. Haran, Coordinator of Probation Training Programs and Chief U.S. Probation Officer, E.D.N.Y.; Dr. John M. Martin, Prof. and Univ. Director, Criminal Justice Program, Fordham Univ.; Judge Walter E. Hoffman; Mr. Richard M. Mischke, Dep. Dir. of Continuing Education and Training, the F.J.C.; Dr. Peter L. Sissons, Associate Prof. and Dir., Graduate Training Program for U.S. Probation Officers, Fordham Univ.; Rev. Harry J. Sievers, S.J. (seated), Dean, Graduate School of Arts and Sciences, Fordham Univ.

## FJC INAUGURATES GRADUATE TRAINING PROGRAM FOR PROBATION OFFICERS

The Federal Judicial Center with the cooperation of Fordham University's Department of Arts and Sciences has developed a graduate training program specifically designed to meet the professional needs of probation officers.

The program will be partially funded through payment of travel and per diem by the Federal Judicial Center. Upon successful completion of the curriculum

(See TRAINING, page 4)



(MAGISTRATES from page 1)

- issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.
- Conduct of pretrial conferences, omnibus hearings, and related proceedings.
- Conduct of post-indictment arraignments, acceptance of not-guilty pleas, and the ordering of a presentence report on a defendant who signifies the desire to plead guilty. A magistrate should not accept pleas of guilty or nolo contendere in cases outside the jurisdiction specified in 18 U.S.C. §3401. See the 1971 Report of Proceedings of the Judicial Conference, p. 54; *Carter v. United States*, 388 F. Supp. 1334 (W.D. Pa., aff'd. 517 F.2d 1397 (3rd Cir. 1975)).

#### **Civil Proceedings**

- General supervision of the civil calendar, including the handling of calendar calls and motions to expedite or postpone the trial of cases.
- Hearing and determining pretrial procedural and discovery motions and other motions or pretrial matters which are not specifically enumerated as an exception in 28 U.S.C. § 636(b)(1)(A).
- Issuance of subpoenas, writs of habeas corpus ad testificandum or ad prosequendum, or other orders necessary to obtain the presence of parties or witnesses or evidence needed for court proceedings.
- Conduct of preliminary and final pretrial conferences, status calls and settlement conferences, and the preparation of a pretrial order following the conclusion of the final pretrial conference.

**Procedure for Review of the Magistrate's Determination**  
In all matters delegated under authority of 28 U.S.C. § 636(b)(1)(A), the magistrate has the statutory power to "hear and

determine." His decision is final and binding, and is subject only to a right of appeal to the district judge to whom the pertinent case has been assigned.

While subsection 636(b)(1)(A) does not specify the procedures to be followed by a litigant in seeking reconsideration of a magistrate's order, it would normally be by motion duly served, filed, and noticed.

No fixed time is specified in the statute within which a party must seek review of a magistrate's order, because the timeliness of a request will depend to a large extent on: (1) the nature of nondispositive pretrial matter determined by the magistrate; and (2) the pretrial posture of the litigation. These issues as to the method and the procedures for seeking review of a magistrate's determination would appear to be left by the statute to resolution in local rules of court.

The statute, however, does provide a specific standard of review for a judge—the traditional "clearly erroneous" appellate test. The express Congressional intent is that a matter which has been heard and determined by a magistrate need not in every instance be reviewed by a judge. If, however, a party specifically requests reconsideration—based on a showing that the magistrate's order is clearly erroneous or contrary to law—the judge must reconsider the matter.

The judge, of course, has the inherent power to rehear or reconsider any matter *sua sponte*. Preliminary rulings during the pretrial state of a case, moreover, are often subject to review and change in the interest of justice as the case develops. Accordingly, the judge may issue rulings at a later stage which supersede those of the magistrate if conditions warrant.

#### **28 U.S.C. §636(b)(1)(B) Dispositive Matters and Prisoner Cases**

The following duties may be assigned to a magistrate for review, to conduct necessary evidentiary and other hearings or oral argument, and submit a report and recommendations to a district judge.

#### **Criminal Proceedings**

- Motions to dismiss or quash an indictment or information made by the defendant.
- Motions to suppress evidence.
- Applications to revoke probation (including the conduct of the "final" probation revocation hearing).

#### **Civil Proceedings**

- Motions for injunctive relief (temporary restraining orders and preliminary injunctions).
- Motions to dismiss for failure to state a claim upon which relief may be granted.
- Motions to involuntarily dismiss an action (and the review of default judgments).
- Motions to dismiss or to permit the maintenance of a class action.
- Motions for judgment on the pleadings or for summary judgment.

#### **Judicial Review of Administrative Proceedings**

A magistrate may be delegated to review the administrative record and the pleadings, conduct any pretrial proceedings that may be called for, hear any oral argument that may be necessary, and submit a report and recommended disposition of the case to the district judge in the following types of cases:

- Decisions regarding the granting of benefits to claimants under the Social Security Act, the "Black Lung" benefits laws, and related statutes. [(This duty was expressly approved by the Supreme Court under the old statute in *Mathews v. Secretary of H.E.W.*, 423 U.S. 261 (1976).]
- The administrative award or denial of licenses or similar privileges.
- The adjudication by the Civil Service Commission of adverse employee actions, retirement eligibility and benefits questions, and the rights of employees in such situations as reductions in force.

#### **Prisoner Petitions**

Conduct of evidentiary and other hearings on habeas corpus, 2255, civil rights, and other prisoner



petitions may be handled by magistrates.

In a prisoner case a magistrate may be assigned by the court to perform the following functions:

- Review of habeas corpus petitions filed by state prisoners under 28 U.S.C. § 2254, the issuance of orders to show cause and other necessary orders or writs to obtain a complete record, and the preparation of a report and recommendation as to the appropriate disposition of the petition. [The issuance of pretrial procedural orders would fall within the magistrate's authority to "hear and determine" matters under section 636(b)(1)(A) above].

- Review of habeas corpus petitions filed by federal prisoners for the correction or reduction of sentences under 28 U.S.C. § 2255, and the preparation of a report and recommendation to the district judge as to the disposition of the case. [A petition of a federal prisoner under Rule 34, Fed.R.Crim.P., should not normally be referred to a magistrate, however, if resolution of the issues requires knowledge of the original trial proceedings or might result in overruling a prior determination of a district judge.]

- Review of prisoner suits for the deprivation of civil rights under 42 U.S.C. § 1983, hearing of motions, and the preparation of a report and recommendations to the district judge.

- Taking on-site depositions, gathering evidence, conducting pre-trial conferences, or serving as a mediator at the holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under 42 U.S.C. § 1983.

- Conduct of periodic reviews of proceedings to insure compliance with previous orders of the court regarding conditions of confinement.

- Review of prisoner correspondence.

- Conduct of an evidentiary hearing, or any other hearing, in a

prisoner case in which the petitioner seeks post-trial relief or challenges conditions of confinement.

The statute supersedes the decision of the Supreme Court in *Wingo v. Wedding*, 418 U.S. 461 (1974). The authority of the magistrate under subparagraph (b)(1)(B) is by Congressional design more than the mere authority to make a "preliminary review." It is the power to conduct hearings and to receive evidence relevant to the issues involved in these cases. [The new Rule governing 2254 and 2255 cases track the language of the revised section 636(b).]

#### **28 U.S.C. § 636(b)(2)—Special Master References and Trials By Consent**

The third category of a magistrate's "additional duties" is set

forth in subsection 636(b)(2), which authorizes appointment as a special master under Rule 53 of the Federal Rules of Civil Procedure. If the parties consent to the reference, the requirement of a showing of "exceptional" conditions under Rule 53 of the Federal Rules of Civil Procedure becomes inapplicable. Under Rule 53(e)(4), moreover, the parties may stipulate that the magistrate's findings of fact shall be final and that only questions of law may thereafter be considered.

#### **28 U.S.C. § 636(b)(3)—**

##### **Miscellaneous Additional Rules**

Under subsection 636(b)(3) the district courts may "continue innovative experiments" in the assignment of duties to magistrates which may not necessarily be included in the broad category of "pretrial matters" under subsection 636(b)(1). ■■

## **CIRCUIT JUDGES HOLD CONFERENCE**

A conference for judges of the United States Courts of Appeals was held last month, one of the most successful of several which have been conducted by the Federal Judicial Center. All but one of the Circuit Chief Judges was in attendance, as were 26 other Circuit Judges.

A capable Planning Committee, which worked under the Chairmanship of Judge Ruggero J. Aldisert (CA-3) deserves credit for the high quality of the program and the overall approval of the conferees. In addition to Federal Judicial Center Director Walter E. Hoffman, other members of the committee were: Judge Griffin B. Bell (CA-5, now resigned), Judge Edward D. Re (U.S. Customs Court), and Professor Maurice Rosenberg (Columbia Law School).

An equal amount of credit is due to a distinguished faculty, nearly all of whom attended at a personal sacrifice of time. Professors who interrupted their teaching schedules to participate were: Paul M. Bator (Harvard), Kenneth Culp Davis (San Diego), Robert E.

Keeton (Harvard), James C. Kirby, (N.Y.U.), Paul J. Mishkin (University of California), Charles Alan Wright (Texas), Bernard J. Ward (Texas), and E. Donald Shapiro (New York Law School).

The programs for the Circuit Conferences differ somewhat from those for the district judges in that their discussions include more substantive law.

In commenting on the program, Judge Aldisert said that they generally emphasized the "nuts and bolts of judging" and beamed the discussions to the role of the judge as a lawmaker. Specific questions addressed were: What is precedent? What is "doctrinaire"? In approaching the review function, how does a judge determine what is reversible trial error, and what is harmless error?

To deal with the subject of opinion writing, a panel discussion was held which took up the matter of selecting, interpreting and applying the federal precept, and including sociological jurisprudence. ■■



(TRAINING from page 1)

tailored specifically to their professional needs, probation officers will receive a Master of Arts degree.

The courses offered are interdisciplinary in nature and include such areas as sociology, law, social work, psychology and management.

Course content will be devoted to issues regarding probation and parole theory and practice, the legal aspects of corrections, the analysis of the Federal Criminal Justice System, social theory, personality development and deviant behavior, caseload management and supervision, rural-urban and minority group aspects of crime, the special problems of organized and white collar crime, problems of sentencing and the law of evidence.


The program leads to a 36-credit degree in sociology. Twelve credits will be given per year in two semesters, with two three-credit courses given in each semester. An intensive 14 week semester format will precede a one-week classroom instruction period.

Anyone holding a Bachelor's Degree from a recognized institution is eligible to apply and will be considered for the program.

The program is basically one combining correspondence courses followed by a one-week period during which students will meet with Fordham professors at a regional training center for intensive study followed by an examination in the subject which they have been studying.

It is important to note that students must pay their own tuition, which is estimated at approximately \$1,000 per year and that the Federal Judicial Center will pay the per diem and travel expenses for the intensive one-week sessions with the professor.

For additional information contact Fordham University at (212) 933-2233, Ext. 510 or write the Graduate Training Program for United States Probation Officers, Department of Sociology and Anthropology, Fordham University, Bronx, N.Y. 10458.

Probation officers wishing to discuss the program in detail contact James F. Haran, Chief United States Probation Officer, Eastern District of New York, 304 United States Court House, Brooklyn, New York 11201. Tel. (212) 875-8044. 


### SENATE COMMITTEE RELEASES SURVEILLANCE TECHNOLOGY REPORT

The Senate Judiciary Subcommittee on Constitutional Rights recently released its 1,000-page report on surveillance technology.

In releasing the report, Senator John V. Tunney, Chairman of the Subcommittee, said that the report's documentation of the existence of a surveillance technology industry will force both the Congress and the Executive Branch to establish, as soon as possible, the institutions necessary to monitor and patrol the proliferation of surveillance technology.


[Copies will not be available until early December.]

Here are some of the key findings of the report:

- There is indeed a surveillance technology industry.
- The industry is largely unregulated and unscrutinized and, as a result, poses a serious threat to the privacy, liberty and security of every American. 

### PROVING FEDERAL CRIMES

The Department of Justice handbook, "Proving Federal Crimes," revised in April 1976, can now be made available to those judges and officers of the federal judiciary desiring to have a copy. The document, however, continues to be restricted to official use.


A reprinting will be ordered in January based upon requests received. A requisition should be submitted to the Administrative Office by December 31, 1976 by any judge or officer desiring a copy of this publication. 

### SUPREME COURT DECLINES REVIEW OF UNPUBLISHED OPINIONS ISSUE

The Supreme Court on November 1 declined to review a case which had at issue the question of whether unpublished opinions may be cited by counsel in the Seventh Circuit.

The issue arose in the case of *Do-Right Auto Sales, et al. v. U.S. Court of Appeals for the Seventh Circuit*, and involved the Seventh Circuit's Local Rule 28 which prohibits the citation of unpublished opinions. Rule 28 was an attempt by the Seventh Circuit to cut down increasingly heavy caseloads. Several other Circuits throughout the country have similar Rules. The Rule helps speed the disposition of cases and is used mainly when a formalized, published opinion would not have precedential value or when publication would serve no useful purpose generally—to the legal profession or the litigants.

Counsel throughout the legal community have been in disagreement on this matter, and members of study groups, including the Advisory Council for Appellate Justice and the ABA Commission on Standards for Judicial Administration, have not been totally unified on the citability issue.

[For previous story on this subject see *The Third Branch*, vol. No. 7, July, 1976, p. 9] 

### DATE EXTENDED ON COMPLEX LITIGATION MANUAL DRAFT

The date for the submission of comments on the tentative draft of the fourth revision of the Manual for Complex Litigation has been extended to December 15 [See article in the October issue *The Third Branch*, pg. 6]. National hearings on the revisions to the manual will be held at times and places to be announced later. Testimony will be received from all counsel who have timely filed written suggestions concerning the revision of the manual. For further information contact Multidistrict Litigation Panel, 1030 Executive Building, Washington, DC 20005.






Collins T. Fitzpatrick

## SEVENTH CIRCUIT APPOINTS CIRCUIT EXECUTIVE

Collins T. Fitzpatrick was appointed Circuit Executive for the Seventh Circuit September 16. Until this date the Seventh Circuit judges had not had a Circuit Executive.

Just thirty-three years of age, he is the youngest of the ten Circuit executives who serve in the Federal Judicial System.

Mr. Fitzpatrick is no stranger to the Seventh Circuit. He clerked for the late Circuit Judge Roger J. Wiley, was Administrative Assistant to Judge Luther M. Swygert when the Judge was Chief of the Seventh, was appointed a supervisory clerk in 1975, and just prior to his appointment as a Circuit Executive, he was serving as a Senior Law Clerk.

Mr. Fitzpatrick is a graduate of Marquette University, receiving his B.B. degree there in 1966. He received his J.D. degree from Harvard in 1969 and earned a Masters in Political Science at the University of Illinois in 1971. 

(TAX from page 1)

of any individual (generally the taxpayer under investigation) identified in such summons, notice shall be given to the taxpayer in most situations.

At that point the taxpayer has the right to intervene in any enforce-

ment proceeding and also the right to stay compliance with the summons by the "third-party recordkeeper" by giving a written notice to him not to comply, sending a copy by registered or certified mail to such person and to such office as the Treasury Secretary may direct. On the giving of such notice the Government may not examine the records required to be produced pursuant to that subject prior to obtaining an order of authorization from the district court.

There is, however, an additional requirement in the case of a "John Doe" summons. Such summons which does not identify the liable taxpayer may be served only after an ex parte court proceeding in which IRS establishes that:

"(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

"(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

"(3) the information sought to be obtained from the examination of the records (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources."

All these proceedings "take precedence on the docket over all cases and shall be assigned for hearing and decided at the earliest practicable date."

The Internal Revenue Service estimates that yearly, approximately 38,400 summonses are potentially subject to the requirements of the new 26 U.S.C. § 7609.

## AN ANALYSIS OF THE CIVIL RIGHTS ATTORNEYS' FEES AWARDS ACT OF 1976

A major innovation in the judicial process is Public Law 94-499 which allows the award of attorneys' fees to be paid to the prevailing party, by the losing party, at the discretion of the judicial officer, in civil rights

cases and in tax cases brought by the IRS where the existence of a tax liability on the part of the defendant is found to be without merit.

With respect to civil rights cases the Act simply extends to other civil rights cases the discretionary award already in effect with respect to Titles II and VII of the 1964 Civil Rights Act and Section 402 of the 1975 Voting Rights Act Amendments.

The purpose of the law as explained in the Senate Report (94-1011) is to remedy anomalous gaps in the law as discussed in *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975), extending the law, in addition, to prevailing parties in suits under 42 U.S.C. §§1981-1985; 20 U.S.C. § 1681; and 42 U.S.C. §2000d, and to successful tax defendants.

In awarding attorneys' fees as "costs" in civil rights cases, the prevailing party can be either the plaintiff or defendant. As explained in *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402 (1968), the emphasis will be on reimbursement to private parties bringing the suit.

The Senate Report, however, notes that costs could also be assessed against the petitioners in "bad faith" situations or when the suit is "frivolous, vexatious, or brought for harassment purposes."

The Senate Report also points out that counsel fees under the Act may be awarded *pendente lite*, citing *Bradley v. School Board of the City of Richmond*, 416 U.S. 696 (1974), and that such an award is particularly appropriate where a party has prevailed on an important matter in the course of litigation, even when he ultimately does not prevail on all issues.

The report further points out that a party may be considered to have prevailed for award of counsel fees even when he vindicates rights through a consent judgment or without formally obtaining relief.

The Senate Report explains that the attorneys' fees, like other items of cost, will be collected either directly from the official, in his

(See FEES page 6)



(FEES from page 6)

official capacity, from funds of his agency or under his control, or from the state or local government (whether or not the agency or government is a named party).

The amount of fees, it explains, should not be reduced because the rights involved are nonpecuniary in nature. The fees should be adequate to attract competent counsel, but not to produce "windfalls" to attorneys.

The Report continues, "In computing the fee, counsel for prevailing parties should be paid, as is traditional with attorneys compensated by a fee-paying client, 'for all time reasonably expended on a matter' citing among other cases *Stanford Daily v. Zurchar*, 64 F.R.D. 680, 684 (N.D. Cal. 1974).

Senator John V. Tunney, the author of the bill, told the Senate that the 12 factors to be considered in computing fees should be those set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). ■

#### JUSTICE DEPARTMENT PUBLISHES PUBLIC DEFENDER MANUALS

The Law Enforcement Assistance Administration has published two manuals designed to help criminal justice experts evaluate the effectiveness of public defender systems, either by an independent team or through in-house evaluations.

The two manuals, "Evaluation Design of the Offices of the Public Defender" and "The Self Evaluation Manual for the Offices of the Public Defender" were developed by the National Legal Aid and Defender Association under an LEAA grant.

Copies of the manuals can be obtained by contacting the National Legal Aid and Defender Association, American Bar Center, 1155 East 60th Street, Chicago, Illinois 60637.

## Bulletin

### CREDIT FOR FOREIGN CUSTODY

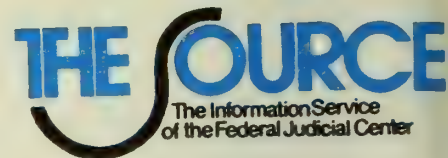
The General Counsel of the Administrative Office of the United States Courts has received the following communication from Acting Chief, William S. Lynch, Narcotic and Dangerous Drug Section, Criminal Division, Department of Justice:

"The Bureau of Prisons has informed us that it has a policy of granting sentence credits under 18 U.S.C. 3568 for time spent by federal offenders in foreign custody while awaiting extradition to the United States for trial on federal criminal charges. This policy applies, *inter alia*, to major narcotic traffickers who are detained in foreign countries pending extradition to the United States.

"The policy can have a significant impact on the actual amount of time convicted felons serve in prison under sentences imposed on them. To illustrate, several months ago a narcotic trafficker who was extradited from Switzerland and subsequently given a nine-year prison term was allowed three years credit toward that term by the Bureau of Prisons as a result of his having spent three years in a Swiss jail awaiting extradition.

"In determining when an offender has come within the custody of foreign officials, the Bureau of Prisons applies the same standards used in domestic cases. In other words, the Bureau allows sentence credits in the same manner as it allows credits to federal offenders who are detained in local (state and county) jails awaiting trial on federal charges. Thus, 'custody' begins as of the moment the offender is arrested and physically incarcerated. Custody continues as long as the offender remains in jail. Any part of a day spent in jail is equivalent to a full day for credit purposes.

"The Bureau of Prisons advised that it is not certain whether federal judges are aware of its policy of allowing foreign jail credits. Fearing that many judges may not be aware of that policy, we decided to bring the matter to your attention. If federal judges are not familiar with the policy, we would appreciate your taking the necessary action to bring it to their attention. We ourselves are bringing the policy to the attention of United States Attorneys." ■



- The Class Action as an Antitrust Enforcement Device: the Chicago Experience (I). Benjamin S. DuVal, Jr. 1976 A.B.F. Research J. 1021-1106.

- Federal Habeas Corpus in State Guilty Pleas. Arthur N. Bishop. 71 F.R.D. 235-333 (Oct. 1976).

- Organizations, Decisions and Courts. Lawrence B. Mohr. 10 Law & Society Rev. 621-42 (Summer 1976).

- Role of Videotape in the Criminal Court. X Suffolk L. Rev. 1065-1140 (Summer 1976).

- State Court Administrators: Qualifications and Responsibilities. Rachel N. Doan and Robert A. Shapiro. American Judicature Society, 1976.

- What I Expect of a Trial Judge. Seth M. Hufstедler/What I Expect of a Trial Lawyer. Shirley Hufstедler. Barrister 36-9+ (Fall 1976). ■

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#### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts



# STATISTICS FOR FEDERAL COURTS

The Administrative Office of the United States Courts published this month the key workload and performance statistics for each United States Court of Appeals and each District Court for Fiscal years 1971 through 1976. [The report will be available shortly from the Administrative Office.] Here are the key statistics for the years 1971, 1975 and 1976 for both the Courts of Appeals and the District Courts.

## District Courts

	1976	1975	1971
<b>Overall Workload Statistics</b>			
Filings	171,617	160,602	136,553
Terminations	153,850	148,298	126,145
Pending	159,945	142,178	124,525
Percent Change over last year	6.9		25.7
in Total Filings			
Current Year			
Number of Judge-ships	399	400	401
<b>Actions Per Judgeship</b>			
Total (Filings)	430	402	341
Civil (Filings)	327	294	233
Criminal	103	108	108
Pending Cases	401	355	311
Weighted Filings	432	400	307
Terminations	386	371	315
Trials Completed	49	48	44
<b>Median Times (Months)</b>			
Criminal	3.1	3.6	3.0
Civil	9	9	9
From Issue to Trial (civil only)	11	11	11
<b>Other</b>			
Number (and %) of Civil Cases Over 3 Years Old	9,414 (6.9)	7,563 (6.4)	9,022 (9.2)
Triable Defendants in Pending Criminal Cases	8,028	2,083	2,769
Number (and %) Vacant Judgeship Mos.	(28.9)	(18.5)	(31.9)
	240.6	190.2	604.8
Juror Usage Index	19.73	19.32	23.31
% of Jurors Not Serving	39.7	39.9	45.8

## Courts of Appeals

	1976	1975	1971
<b>Overall Workload Statistics</b>			
Filings	18,408	16,658	12,788
Terminations	16,426	16,000	12,368
Pending	14,110	12,128	9,232
Percent Change in Total Filings			
Current Year	10.5		43.9
Number of Judge-ships	97	97	97
<b>Actions Per Judgeship</b>			
Total (appeals filed)	190	172	132
Prisoner	25	25	26
All Other Civil	91	80	52
Criminal	48	43	33
Administrative	26	24	14
Pending Appeals	145	125	95
Total (Appeals Terminated)	169	165	128
Consolidations & Cross Appeals	19	20	14
Without Hearing or Submission	54	51	35
After Hearing or Submission	96	94	78
Per Curiam (opinions)	29	24	32
Signed (opinions)	39	37	34
% Reversed or Denied	17.9	17.8	18.1
Median Time (Mos.) from Filing Complete Record to Disposition	7.1	7.4	7.6
Total case participations	26,342	25,945	17,653
Participation % by Active Judges	79.6	77.4	79.9
Participation % by Senior Judges	10.0	10.8	9.5



# PERSONNEL

## Appointments

Sidney M. Aronovitz, U.S. District Judge, S.D.Fla., Oct. 8  
 W. Eugene Davis, U.S. District Judge, W.D.La., Oct. 25  
 Peter T. Fay, U.S. Circuit Judge, 5th Cir., Oct. 8  
 Glen M. Williams, U.S. District Judge, W.D.Va., Oct. 12

## Elevation

Anthony A. Alaimo, Chief Judge, U.S. District Court, S.D. Ga., Nov. 1

# DOJ JC calendar

Nov. 29-Dec. 1 Seminar for Staff Attorneys, Washington, D.C.  
 Dec. 7-10 Seminar for Crisis Intervention for U.S. Probation Officers, Washington, D.C.  
 Dec. 9-10 Judicial Conference Committee on Rules of Admission to Practice in the Federal Courts, San Antonio, TX  
 Dec. 15-17 Seminar for Bankruptcy Judges, Ft. Lauderdale, FL  
 Jan. 6 Judicial Conference Committee on Supporting Personnel, Washington, D.C.

Jan. 24-25 Judicial Conference Jury Committee, Sea Island, GA  
 Jan. 31-Feb. 1 Judicial Conference Committee on Court Administration, Key Biscayne, FL

Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, FL  
 Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, FL  
 Feb. 5 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, FL  
 Feb. 7-9 Workshop for District Court Judges (CA-10), Seattle, WN  
 Feb. 14-18 Advanced Seminar for Probation Officers, San Diego, CA

## CIRCUIT CONFERENCES—1977

Circuit	Date	Location
D.C.	May 22-24	Hershey, Pennsylvania
First	Not yet set	Not yet set
Second	Not yet set	Not yet set
Third	September 18-21	Tamiment, Pennsylvania
Fourth	June 23-25	Hot Springs, Virginia
Fifth	May 1-5	Birmingham, Alabama
Sixth	May 11-14	Louisville, Kentucky
Seventh	May 9-11	Chicago, Illinois
Eighth	June 29-July 2	Kansas City, Missouri
Ninth	June 11-16	Kauai, Hawaii
Tenth	July 13-17	Salt Lake City, Utah

## THE THIRD BRANCH

VOL. 8, NO. 11 NOVEMBER 1976

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## Bulletin of the Federal Courts

VOL. 8, NO. 12

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DECEMBER 1976

### CIRCUIT COURT RULES ON EXHIBIT ACCESS

On October 26th the U.S. Court of Appeals for the District of Columbia Circuit handed down an opinion in the Watergate Tapes case, finding a common law right in television and radio systems and a phonograph record company to inspect and copy the Watergate tapes admitted as exhibits in the underlying criminal case against the Watergate principals.

The Court based its opinion on the common law right to inspect public records, bypassed various constitutional arguments raised in the matter, and rejected arguments of ex-President Nixon that disclosure would violate the privilege of confidentiality for presidential communications and would invade his and others right of privacy.

The Court distinguished between "judicial records" and "private property temporarily in the custody of the clerk until the case in which the exhibits are introduced is concluded," noting that these tapes are exhibits in the case and thus part of the record on appeal, citing as authority F.R. App. P. 10(a) (which makes exhibits part of the record on appeal) and the Manual for the Clerks of the United States District Courts (which at §§201.1 and 201.2 classifies exhibits as "auxiliary case records").

The Court noted that while exhibits in special cases (e.g. pornographic movies and tapes of wiretapped conversations) could arguably be removed from public inspection, such possible exceptions would not justify a total ban on inspection in other situations.

The Court also noted that while courts have always asserted the power to seal their records when deemed necessary, subject to appellate review for abuse, that discretion does not give a court an unbridled right to do so simply as a

policy determination; and, in any event, the Court questioned whether that power extends to transcripts or exhibits already displayed in open court. ("It suffices to note that once an exhibit is publicly displayed, the interests in subsequently denying access to it necessarily will be diminished.")

Rejected by the Court was the argument that the chance of prejudice to a retrial of the case justifies restriction against duplication, noting that risk of possible prejudice to a "hypothetical" second trial is always present in any case and there would always be a *possibility* that by appeal or by successful collateral attack a new trial could result. In any event the risk is not sufficiently grave in this case, according to the opinion, especially since the transcripts have already been widely circulated.

In remanding the case the Court did not spell out how the sound qualities of the tapes (as opposed to a transcription) could be

(See EXHIBITS, page 2)

### ADMINISTRATIVE OFFICE PUBLISHES JUROR UTILIZATION STATISTICS

The Administrative Office of the United States Courts this month issued its sixth report on Juror Utilization in the United States District Courts.

Director Rowland F. Kirks said in the foreword to the report that, "It is hoped that the presentation of information on the entire jury program will prove useful to the federal judiciary and all those taking an interest in the improvement of juror service and the utilization of those citizens reporting for jury duty."

#### Grand Jury

Two full years of data collection have provided the Administrative Office with a substantial overview of the activities of Federal Grand Juries as well as information regarding the utilization of Grand Juries in the system.

During the Fiscal Years 1975 and 1976 the total number of Grand Juries in existence increased by 6 percent from 570 to 604. The number of sessions convened by Grand Juries rose 7.1 percent—8,404 sessions convened in 1976 compared to 7,846 in 1975.

The number of jurors involved in these convened sessions increased by 11,018 or 7.1 percent while the number of hours in session increased by 8.1 percent from 41,421 hours in Fiscal Year 1975 to 44,765 hours in 1976.

These increases are partially  
(See JUROR, page 6)



(EXHIBITS from page 1)

released but noted that the principles of such procedure had been set forth in Judge Gesell's initial opinions in the Court below, i.e., distribution should be prompt and on an equal basis to all persons desiring copies; the Court cannot be expected to assume the cost of distribution, nor should the Court's time or personnel be unduly imposed upon, and neither the Court, nor any agent it appoints, should profit from the public's exercise of its common law right.

Circuit Judge MacKinnon, dissenting, believed that reproduction of tape exhibits should await appeal disposition. He found a difference between access to physical exhibits and the transcript of oral testimony, noting that physical exhibits such as the tapes are the personal property of the owner and the usual practice is to return them to their owners when the case is finished. He also noted as a further reason for restricting access pending final judgment that tapes are subject to alteration and erasure which would prejudice any retrial. ■

#### FJC SEMINAR HELD FOR STAFF ATTORNEYS

The Federal Judicial Center this month held its first seminar for staff attorneys which emphasized review and analysis of circuit staff attorney offices; observations of a circuit judge regarding staff attorneys; uses and potential uses of staff attorneys in appellate courts; effective utilization of resources; and advanced research, reporting and writing techniques.

In addition to the Chairman of the Seminar, Judge William J. Campbell, Center Director Walter E. Hoffman, Judge Anthony Kennedy (CA-9) and Circuit Executive Emory G. Hatcher participated.

Professor Daniel J. Meador of the University of Virginia Law School addressed the Staff Attorneys on uses and potential uses of Staff Attorneys in appellate courts; relationship of Staff Attorneys to abbreviated processes; screening before and after briefing; research



Professor Daniel J. Meador of the University of Virginia School of Law, right, responds to questions from Circuit Staff Attorneys at recent seminar. Attorneys are from left to right: Henry Hoppe, III, Senior Staff Counsel (CA-5), Richard J. Banta (partially hidden) Senior Staff Attorney (CA-10), Gerald Greiman, Staff Attorney (CA-4), Judge Anthony M. Kennedy (center background) (CA-9), and Kenneth A. Howe, Senior Staff Attorney (CA-6)

assistance; memorandum writing; conference participation; and the delegation of problems.

Professor Paul R. Baier of Louisiana State University Law School discussed advanced research, reporting and writing techniques; computerized research; staff work product; input to judgments; and writing. ■

#### JUDGES ALDRICH, JONES APPOINTED TO JUDICIAL CONFERENCE COMMITTEES

The Chief Justice has announced the appointment of Judge Bailey Aldrich (CA-1) as Chairman of the Advisory Committee on Appellate Rules. The Advisory Committee studies federal appellate court rules and makes reports to the Judicial Conference Committee on Rules of Practice and Procedure.

Judge Aldrich, the former Chief Judge of the First Circuit, has been a member of the Advisory Committee since November 6, 1973.

Judge Aldrich fills a vacancy created by the death of Judge William Hastie who was appointed Chairman of this Committee on October 1, 1973.

The Chief Justice announced also the designation of Chief Judge William B. Jones (Dist. D.C.) as Chairman of the Judicial Conference Advisory Committee on Judicial Activities. Judge Jones succeeded Judge Elbert P.

Tuttle (CA-5) who has served in that capacity for the last seven years. Judge Tuttle will continue as a member of the Committee. ■

## STATE-FEDERAL

#### MISSOURI, OREGON HOLD STATE-FEDERAL JUDICIAL COUNCIL MEETINGS

**Oregon.** The chambers of Chief Judge Robert C. Belloni was the site for the most recent meeting of the Oregon State-Federal Judicial Council meeting. Council membership consists of four state and four federal judges. Chief Justice Arno H. Denecke of the Supreme Court of Oregon is Chairman.

Because all judges of this state have a concern for growing caseloads in their courts, much time was devoted to an exchange of ideas on how to dispose of cases expeditiously and efficiently. The discussion included the topic of the effective use of settlement conferences.

Other matters discussed at the meeting were: Summary judgments, an exchange of available courthouse facilities when emergencies arise; courtroom security procedures; and an exchange of presentence reports on criminal defendants who have charges pending against them in both state and federal courts.


**Missouri.** Another meeting of the Missouri State-Federal Judicial Council was held November 11 in Jefferson City. Chief Justice Robert E. Seiler of the Supreme Court of Missouri and Chief Judge Floyd R. Gibson (CA-8), the two ranking judges in the state, were both in attendance.

An agenda encompassing number of matters of mutual concern to the judges included such subjects as: Whether common standards should be adopted to assure that litigants will be represented by effective counsel; juror utilization; and state habeas corpus cases.

Of primary concern was the growing number of habeas corpus



and civil rights cases being filed in the federal courts by prisoners in the state penitentiary. Chief Justice Seiler has expressed a hope that the state judges can in some way alleviate the caseloads of the federal judges, possibly through state administrative procedures.

It is expected that another meeting will be called by the Chief Justice next spring. 

### CENTER HOLDS WORKSHOP FOR CLERKS AND DEPUTY CLERKS

The Federal Judicial Center held a three-day workshop for clerks and deputy clerks which emphasized the General Services Administration, Standard Level User Charges, Procurement, and Property Management and Records Storage.

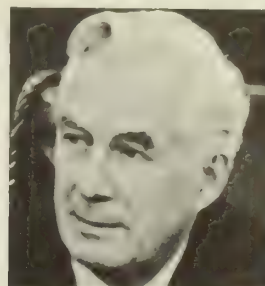
The workshop, which was held in Salt Lake City, focused on these objectives:

- To provide clerks and deputy clerks with review, discussion, and analysis of policies and information concerning the functions, responsibilities, methodology of operations, and constraints governing the work of those sections, branches, and divisions of the Administrative Office dealing with the General Services Administration.
- To furnish clerks and deputy clerks with specific, detailed information on the procedures, standards, methodology, forms or reports, and both the policies and recommended solutions available when problems arise in connection with space, buildings, furniture, equipment, typewriters, copying equipment, cash registers, calculators, filing cabinets, motorized file equipment, records storage, law books, publications, journals, consumable supplies, and physical security.
- To give clerks and deputy clerks a forum for sharing information on, and learning about, procedures, techniques, practices, problems, and solutions of their colleagues in other courts.

The Chairman of the workshop was Judge William J. Campbell and the specific details of the workshop program were developed by Earl J. Ross, Chief, Curriculum Development and Evaluation of the Federal Judicial Center's Division of Continuing Education and Training.

### A HOLIDAY MESSAGE FROM

## THE CHIEF JUSTICE



Chief Justice Burger

The advent of the Holiday Season, with its great traditions and warm personal memories, gives us reason to reflect on events in the Judicial Branch in the past year. The "Pound Revisited" Conference in St. Paul on the 70th anniversary of Dean Pound's speech to the ABA was the first cooperative effort between the state and federal judiciary and the bar to face up to a host of accumulated problems in the American system of justice. We hope the stimulation and new sense of direction from that conference will be a continued source of guidance as we work to provide simpler, fairer and speedier justice in an increasingly complex world.

For those of us familiar with the rigors of the federal courts, another year of increased productivity by all judges and court staffs was a remarkable accomplishment.

Mrs. Burger joins me in extending to you and your family our best wishes for a restful and Happy Holiday, and renewed vigor for the New Year.

*Warren E. Burger*

### "PARTNERS IN JUSTICE": LAW DAY THEME

The American Bar Association has announced that the 1977 Law Day observance will have as its theme "Partners in Justice."

This theme was selected in the belief that the public does not have a clear understanding as to the role of the courts in this country. State and local bar associations will be urged to emphasize how the courts function—how the judicial process works, what problems face the courts today, and how citizens and institutions can help support, strengthen and improve the system.

Several organizations have been invited to assist bar associations and other civic groups in presenting Law Day programs including the Conference of Chief Justices and the Judicial Conference of the United States.

May 1, 1977 will mark the twentieth year that the ABA has sponsored Law Day. The program was started by ABA President Charles S. Rhyne in 1957 and has each year been supported by a Presidential Proclamation announcing "Law Day—U.S.A."

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



# STATUS OF MAJOR COURT-RELATED

(Prepared by the General Counsel's

Subject	House Bill And Sponsor	Senate Bill And Sponsor	Final Status At Close of Congress	Remarks
Judicial Survivors Annuities Reform Act	*S. 12	*S. 12 (McClellan)	Pub. L. 94-554 Signed Oct. 19, 1976 90 Stat. 2603	Effective January 1, 1977
Magistrates Salaries	*S.2923	*S. 2923 (Burdick)	Pub. L. 94-520 Signed October, 1976 90 Stat. 2458	Effective December 1, 1976
Magistrate Jurisdiction	*S. 1283	*S. 1283 (Burdick)	Pub. L. 94-577 Signed Oct. 21, 1976 90 Stat. 2458	Effective Oct. 21, 1976, excluding amendment to habeas corpus and Sec. 2255 rules, effective Feb. 1, 1977
Legislative Appropriation Act, 1977	H.R. 14238 (Shipley)	H.R. 14238	Pub. L. 94-440 Signed Oct. 1, 1976 90 Stat. 1439	Effective Oct. 1, 1976 (Cost-of-living raise foreclosure amendment)
Habeas Corpus, Sec. 2255 Rules	H.R. 15319 (Hungate)	H.R. 15319	Pub. L. 94-426 Signed Sept. 28, 1976 90 Stat. 1334	Effective February 1, 1977
Hart-Scott-Rodino Antitrust Improvements Act of 1976	H.R. 8532 (Rodino)	H.R. 8532	Pub. L. 94-435 Signed Sept. 30, 1976 90 Stat. 1383	Provisions effective on varying dates: Clayton Act (parens patriae) provisions effective Sept. 30, 1976 (will not apply to any injury sustained prior to such date.)
The Civil Rights Attorney's Fees Awards Act of 1976	S. 2278	S. 2278 (Tunney)	Pub. L. 94-559 Signed Oct. 19, 1976 90 Stat. 2641	Effective October 19, 1976
Revision of Copyright Law	S. 22	S. 22 (McClellan)	Pub. L. 94-553 Signed Oct. 19, 1976	Effective Jan. 1, 1978 (Exception: Judicial Re- view Sec. 810 effective October 19, 1976)
Tax Reform Act of 1976	H.R. 10612 (Ullman)	H.R. 10612	Pub. L. 94-455 Signed Oct. 4, 1976 90 Stat. 1520	Independent effective dates for substantive provisions. Generally applies to all taxable years beginning after December 31, 1975.
Unsworn Declaration As Evidence	H.R. 15531 (Danielson)	H.R. 15531	Pub. L. 94-550 Signed Oct. 18, 1976 90 Stat. 2534	Effective October 18, 1976
Judicial Review Adminis- trative Agency Action	S. 800	S. 800 (Kennedy and Mathias)	Pub. L. 94-574 Signed Oct. 21, 1976 90 Stat. 2721	Effective October 21, 1976
Law Enforcement Assistance Administration Extension Act. Note: Provided funds to state attorneys general for imple- mentation of antitrust violation actions.	S. 2212	S. 2212 (Hruska)	Pub. L. 94-503 Signed Oct. 15, 1976 90 Stat. 2407	Effective October 15, 1976
Foreign Sovereign Immunities Act of 1976	H.R. 11315 (Rodino)	S. 3553 (Hruska)	Pub. L. 94-583 Signed Oct. 21, 1976 90 Stat. 2889	Effective 90 days after enactment date.
Judgeships, Appellate	*H.R. 4422 (Rodino) 13 Judgeships	S. 286 (Burdick) 7 Judgeships	Senate bill passed Oct. 2, 1975. House bill tabled in Subcommittee	Likely to be reconsidered early in next session.
Judgeships, District	*H.R. 4421 (Rodino) 52 Judgeships	S. 287 (Burdick) 45 Judgeships	Senate bill passed April 1, 1976. House bill pending on Calendar.	Likely to be reconsidered early in next session.



# ATION END OF THE 94TH CONGRESS

## Administrative Office of U.S. Courts.)

Subject	House Bill And Sponsor	Senate Bill And Sponsor	Final Status At Close of Congress	Remarks
Financial Disclosure	H.R. 3249 (Kastenmeier)	S. 495 (Ribicoff)	Senate bill passed August, 1976. House bill pending in Judiciary Comm.	Likely to be reconsidered by 95th Congress.
Foreclosure Judges' Civil Service Annuities	H.R. 12882 (Henderson)		Pending House Rules Committee	
Ninth Circuit Revision		S. 739 (Burdick)	Pending on Senate Calendar	Likely to be reconsidered by 95th Congress.
Fifth Circuit Revision		S. 2752 (Burdick)	Pending on Senate Calendar	Likely to be reconsidered by 95th Congress.
Bilingual Courts	H.R. 8314 (Badillo)	S. 565 (Tunney)	Senate bill passed July 15, 1975. House bill pending in Subcommittee.	Likely to be reconsidered by 95th Congress.
Jury Fees and Juror Employment Protection	*H.R. 6048 (fees) *H.R. 6043 (protection) (both by Rodino)	S. 539 (Burdick)	Senate bill passed Sept. 30, 1975. House bills pending in Subcommittee.	To be resubmitted by Judicial Conference next year.
Jury selection; rehabilitated persons	*H.R. 6050 (Rodino)		Pending House Subcommittee	These six proposals pertaining to jurors will be transmitted by the Judicial Conference next year as an omnibus bill.
Jury selection by data Processing	*H.R. 6051 (Rodino)		Pending House Subcommittee	
Federal Employee Compensation Act coverage for jurors			Transmitted but not introduced	
Jurors' Transportation Expenses			Transmitted but not introduced	
Juror selection; voter registration lists	H.R. 11552 (related bill by Hays)	S. 1177 (related bill by McGee)	Passed House. Pending in Senate Subcommittee	
Six person civil juries	*H.R. 6039 (Rodino)		Pending House Subcommittee	
Patent Law revision, Title 35 U.S.C.	S. 2255	S. 2255 (McClellan)	Senate bill passed Feb. 26, 1976. Remained pending House Judiciary Committee	Likely to be reconsidered next year.
National Court of Appeals	H.R. 11218 (Wiggins)	S. 3423 S. 2762 (Hruska)	Pending in Subcommittee	Likely to be reconsidered next year.
Speedy Trial Act Amendment to re excludable time limits	*H.R. 10598 (Rodino)		Pending in Subcommittee	Likely to be reconsidered next year.
Speedy Trial Act Amendment to re excludable time limits	H.R. 14521 (Hutchinson)		Pending in Subcommittee	Likely to be reconsidered. This is a Justice Department proposal approved by Conference.
Attorney Discipline	*H.R. 6044		Pending in Subcommittee	
Fees and Costs in District Courts	*H.R. 13707 (Rodino)		Pending in Subcommittee	
Criminal Jurisdiction of Magistrates in misdemeanor cases	H.R. 6042 (Rodino)		Pending in Subcommittee	
to increase jurisdictional amount required in diversity cases [Amendment to 28 U.S.C. 1332(a)(1)]			Transmitted but not introduced	Note: Pub. L. 94-574 amended this section to exclude \$10,000 requirement in suits against U.S., or agency or employee thereof.

Denotes Judicial Conference proposals that were submitted to the 94th Congress.



(JUROR from page 1)  
attributable to the efforts by the courts to reduce the time between the defendant's arrest and subsequent indictment under Rule 50(b) interim plans adopted by each district. Nationally, 303 juries were in existence on July 1, 1975. During the 1976 Fiscal Year the number of Grand Juries impanelled (301) exceeded the number discharged (258) by 43, resulting in 346 Grand Juries on June 30, 1976, a 14.2 percent increase over the 303 juries at the close of Fiscal Year 1975.

#### Petit Juror

The utilization of Petit Jurors in the 12-month period ending June 30, 1976 improved in many district courts. However, the *National Juror Usage Index* (obtained by dividing total juror days by the total number of juror trial days) increased slightly from 19.32 in Fiscal Year 1975 to 19.73 this past year.

Since the institution of the Petit Juror Usage reporting program in Fiscal Year 1971, there has been a decrease of 15.4 percent in the J.U.I. from 23.31 in that first year to 19.73 in 1976. Thus, in the six-year period, the efforts of judges and court personnel have resulted in approximately three and one half fewer persons being needed for every jury trial day.

Of the 592,594 total available jurors in 1976, 356,951 or 60.2 percent were jurors selected for or serving on jury trials. This is a steady improvement from the 55.5 percent serving jurors reported in 1972 and indicates 60 of every 100 persons reporting to the courthouse for jury duty were selected for or served on a trial jury. (The *Juror Usage Index* for 1976 ranged from a low of 12.8 in Wyoming to a high of 34.50 in Guam.) While 34 districts reported improved use of their jurors as indicated by a reduction of the J.U.I.'s, 61 of the districts recorded indexes under 20 for the 12-month period.

When Fiscal Year 1975 is compared with 1976, the Middle District of Louisiana and the Eastern District of Illinois have recorded the most improvement in their J.U.I.'s reducing them by 5.83 and 4.55 index points, respectively.

The percentage of jurors selected for or serving on jury trials ranged from a high of 85.0 percent in the Southern District of Alabama to a low of 32.8 percent in Guam. Thirty-seven of the 94 districts recorded 65 percent or more of the prospective jurors in this category. Further, 51 districts recorded increases in the percentage of the prospective jurors who were selected or serving.

## HOLIDAY GREETINGS FROM AO DIRECTOR KIRKS AND FJC DIRECTOR HOFFMAN

The past year has been one evidencing the tremendous dedication of all members of the Judiciary and especially the federal judges who have continued to work to overcome the massive growth in cases at both the district and appellate levels.

We wish not only to express our admiration and appreciation for the work of these dedicated judges and their supporting personnel, but to extend our sincere holiday greetings to all of you and your families.

In addition, we wish to thank all of you for the cooperation which you have continued to give the Administrative Office of the United States Courts and the Federal Judicial Center throughout the year—cooperation which has been vital to the accomplishment of our joint objective: the efficient administration of justice throughout the federal court system.

*Lawrence F. Kirks*  
*Walter E. Hoffman*

**National Petit Juror Usage—United States District Courts  
Fiscal Years 1972-1976**

Petit Jurors	1972	1973	1974	1975	1976	1976 over 1975	
						Increase (Decrease)	Percent Change
<b>Total Available</b>	547,821	573,150	540,628	546,627	592,594	45,967	8.4
Selected or Serving	304,178	324,038	315,419	328,445	356,951	28,506	8.7
Percent	55.5	56.5	58.3	60.1	60.2	—	—
Challenged	79,501	86,520	82,152	88,228	92,727	4,499	5.1
Percent	14.5	15.1	15.2	16.1	15.6	—	—
Not Selected, Serving or Challenged	164,142	162,592	143,057	129,954	142,916	12,962	10.0
Percent	30.0	28.4	26.5	23.8	24.1	—	—
<b>Jury Trial Days</b>	26,176	28,425	28,274	28,293	30,032	1,739	6.1
Criminal	14,615	16,791	16,426	15,818	17,818	2,000	12.6
Percent	55.8	59.1	58.1	55.9	59.3	—	—
Civil	11,561	11,634	11,848	12,475	12,214	(261)	-2.1
Percent	44.2	40.9	41.9	44.1	40.7	—	—



FJC Director Judge Walter E. Hoffman, left, confers with Judge Anthony M. Kenne (CA-9) during break at Center's first seminar for staff attorneys. In the background Louise Jacobs, Senior Staff Attorney (CA-9) (See story page 2.)



## SENATE HOLDS HEARINGS ON NATIONAL COURT

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held two days of hearings last month on the proposal to create a National Court of Appeals.

Among those testifying were Chief Judges J. Collins Seitz (CA-3), Thomas E. Fairchild (CA-7), Frank M. Coffin (CA-1), Professor Maurice Rosenberg of Columbia Law School, Deputy Attorney General Harold R. Tyler, Jr., Barnabas F. Sears, past President of the Illinois State Bar Association, Judge Henry J. Friendly (CA-2), Chesterfield Smith, former President of the American Bar Association, Harvard Professor Paul E. Freund and Judge Donald P. Lay (CA-8).

Deputy Attorney General Tyler, Judge Friendly and Mr. Sears disagreed with the conclusion of the final report of the Commission on the Revision of the Federal Court Appellate System which called for creation of a seven-member, Article III Court which would handle cases referred to it by the Supreme Court as well as those transferred to it by the courts of appeals, the Court of Claims or the Court of Customs and Patent Appeals.

Deputy Attorney General Tyler said "The Department of Justice opposes creation of a National Court for several reasons. First, a National Court would aggravate some of the problems it is intended to relieve. Second, it would diminish the prestige of other federal courts. Third, it fails to address the root problem of reducing the caseloads of federal courts at all levels. Fourth, the National Court's transfer jurisdiction would restrict the Supreme Court's authority to determine what legal issues should be left unresolved at the national level."

Judge Friendly generally agreed with the position of the Department of Justice and told the Subcommittee that the proposed court would do almost nothing to ease the

pressures on most district courts and the courts of appeals; it would increase rather than diminish the burden on the Supreme Court and risk its prestige. Finally, he said it would cause added delay and expense to litigants in an amount and to a degree that cannot be measured until we know how references by the Supreme Court would be handled.

Chief Judge Seitz, emphasizing that he was speaking only for himself and not for all the judges of his Court, favored the creation of the National Court because it would "provide greater uniformity in the law which is essential to the evenhanded administration of justice." He continued, "the Supreme Court cannot, in my view, handle all of the cases which should be resolved by it on the merits in the interest of providing more certainty and uniformity in the law."

Chief Judge Fairchild and Professor Rosenberg clearly supported the creation of the proposed National Court. Both told the Subcommittee that they were speaking for themselves.

Judge Fairchild said that the need for a National Court is evident. "I look at our present federal court system as a pyramid. . . . What has happened to the pyramid is that the base and middle have greatly expanded, whereas the capacity at the top has remained the same. By inserting another court as an additional tier, reviewing state court decisions on federal questions as well as lower federal court decisions, the pyramid's original symmetry can be restored."

Professor Rosenberg agreed with Judge Seitz and said "there is a great need to enlarge the capacity of the federal court system to settle the national law and this need goes beyond the ability of the Supreme Court alone to do so." He pointed out that the "need for authoritative decisions that settle the national law is a need that exists independent of whether or not there is a conflict among circuits as to the meaning of the particular statute."

Professor Rosenberg said that

the argument that the plan for the National Court would burden the Supreme Court with the task of making rules for the operation of a new court was valid but that "it might be answered by encouraging some group—for example, one under the aegis of the Federal Judicial Center—to draft rules for the National Court of Appeals."

Chief Judge Coffin testified that "such a basic change in the structure of the judiciary should be made only after the clearest showing that a new institution is needed now. . . . We do not know how much help the Supreme Court needs now that three-judge courts had been largely eliminated and other national reforms have been proposed [and] we do not know what the National Court will do. It may resolve a handful of conflicts each year; it may evolve into a National Court of errors; it may come to specialize in business cases; or it may do none of these.

"The National Court of Appeals has been called a solution looking for a problem." He proposed that a temporary court be established by utilizing panels of circuit judges rather than choosing a solution "cast in institutional concrete."

Mr. Sears testified in opposition to the proposal and said that the need had not been demonstrated for such a major change in the historic structure of our Federal Judicial System and, moreover, the new court would not relieve any of the burden of the Supreme Court. In fact, he told the Subcommittee that the new court could possibly add to the Supreme Court's burden by forcing the Supreme Court to review cases decided by the proposed new court.

Professor Paul A. Freund told the Subcommittee that a National Court of Appeals proposal embodied in S. 3423 avoids the major objections to the proposal of the Study Group on the Caseload of the Supreme Court.

However, he said there were some questionable aspects to the current National Court proposal:

(See COURT, page 8)



# PERSONNEL

## Appointments

Vincent L. Broderick, U.S. District Judge, S.D.N.Y., Nov. 30  
Howard G. Munson, U.S. District Judge, N.D.N.Y., Nov. 5

## Death

Thomas F. McAllister, U.S. Senior Circuit Judge, 6th Cir., Nov. 10

## Elevation

Albert J. Henderson, Chief Judge, U.S. District Court, N.D.Ga., Nov. 8

# DOJFC calendar

Jan. 6 Judicial Conference Committee on Supporting Personnel, Washington, D.C.  
Jan. 6-7 Judicial Conference Committee on Judicial Improvements, Coronado, CA  
Jan. 7 Judicial Conference Committee on Federal Jurisdiction, Washington, D.C.  
Jan. 20-21 Judicial Conference Committee on Criminal Law, Phoenix, AZ  
Jan. 24-25 Judicial Conference Jury Committee, Sea Island, GA  
Jan. 27-28 Judicial Conference Committee on Probation, San Diego, CA

Jan. 27-28 Judicial Conference Committee on Criminal Rules, Washington, D.C.

Jan. 31-Feb. 1 Judicial Conference on Court Administration, Key Biscayne, FL

Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, FL

Feb. 3-4 Judicial Conference Committee on the Criminal Justice Act, Ft. Lauderdale, FL

Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, FL

Feb. 4 Judicial Conference Committee on Bankruptcy, Miami, FL

Feb. 5 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, FL

Feb. 7-9 Workshop for District Court Judges (CA-10), Seattle, WN

Feb. 14-18 Advanced Seminar for Probation Officers, San Diego, CA

Feb. 28-March 2 In Court Management Training Institute, Honolulu, HI

THE LAW ENFORCEMENT ADMINISTRATION WILL SPONSOR A NATIONAL CONFERENCE ON CRIMINAL JUSTICE EVALUATION IN WASHINGTON, D.C., FEBRUARY 22-24.

(COURT, from page 7)

- The screening and switchboard functions of the Supreme Court become of greater relative importance calling for several decisions in that court on whether to grant review and whether to send the case to the National Court.

- The appellate process becomes over elaborate.

- The proposal may be too modest in that it does not afford direct referral to the present Court of Appeals.

Professor Freund cited as the merits of the proposal the following:

- It provides for a greater decisional capacity for the appellate system.

- The greater decisional capacity would have a relative effect on the caseload of the Courts of Appeals by settling more surely or more promptly issues that breed multiple litigation in the circuits.

- Flexibility is provided by leaving a large measure of discretion to the Supreme Court both in the number of cases remanded and in their subject matter.

Judge Donald P. Lay (CA-8) told the Subcommittee that he has continuously opposed the creation of a National Court of Appeals and that the emphasis for congressional reform is being directed to an area where no acute problem exists.



## THE THIRD BRANCH

VOL. 8, NO. 12 DECEMBER 1976

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## Bulletin of the Federal Courts

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### JUDICIAL CONFERENCE ASKS CONGRESS FOR 122 NEW JUDGESHIPS

Following the quadrennial survey of judgeship needs in the district courts throughout the nation which was conducted in 1976, the Judicial Conference asked Congress to create 122 additional United States judgeships including 16 Courts of Appeals judgeships.

The quadrennial survey was conducted by the Subcommittee on Judicial Statistics of the Judicial Conference with assistance and support of the staff of the Administrative Office.

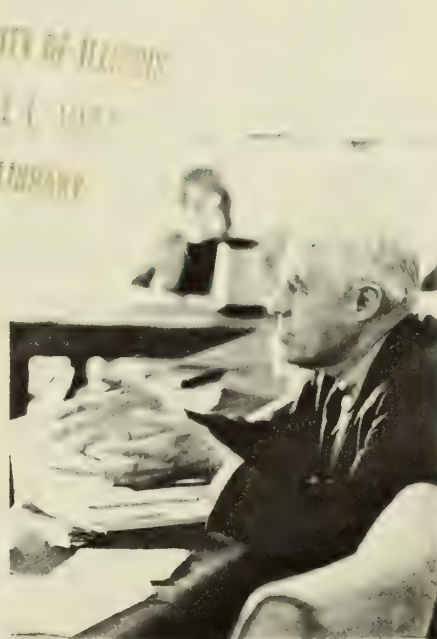
In conducting this survey, the Subcommittee considered the recommendations of the district courts and the judicial councils of the circuits, as well as the statistical information available in the Administrative Office.

Here are the specific recommendations which the Judicial Conference approved:

COURTS	NUMBER OF JUDGESHIPS	
	Dist.	Cir.
First Circuit:		1
Massachusetts	4	
New Hampshire	1	
Puerto Rico	4	
Second Circuit:		
Connecticut	1	
New York:		
Northern	1	
Eastern	1	
Third Circuit:		1
New Jersey	1	
Pennsylvania:		
Middle	2	
Fourth Circuit:		2
Maryland	2	

North Carolina:	
Eastern	1
Middle	1
South Carolina	3
Virginia:	
Eastern	2
Western	2
West Virginia:	
Southern	1
Fifth Circuit:	
Alabama:	
Northern	2
Middle	1
Florida:	
Northern	1
Middle	3
Southern	6
Georgia:	
Northern	5
Southern	1
Louisiana:	
Eastern	4
Middle	1
Western	1
Texas:	
Northern	3
Eastern	1
Southern	5
Western	1

(See JUDGESHIPS, page 2)



Judge Edward J. Lumbard (CA-2) makes a point during a recent meeting of the Study Commission on Records and Documents of Federal Officials held at the Federal Judicial Center.

(See DOCUMENTS, page 8)

### SPEEDY TRIAL ACT GENERATES CIRCUIT CONFLICT

A conflict of circuits has developed on an important issue in the interpretation of the Speedy Trial Act of 1974.

The Court of Appeals for the District of Columbia Circuit, in a ruling issued December 28, held that the interim time limits of 18 U.S.C. 3164 are subject to the "excludable time" provisions of section 3161 (h). *United States v. Corley*, No. 76-2096. The District

(See CONFLICT, page 3)



(JUDGESHIPS from page 1)

	Dist.	Cir.
Sixth Circuit:		1
Kentucky:		
Eastern	2	
Michigan:		
Eastern	3	
Western	2	
Ohio:		
Northern	1	
Southern	1	
Tennessee:		
Middle	1	
Seventh Circuit:		1
Illinois:		
Northern	2	
Eastern	1	
Indiana:		
Northern	1	
Southern	1	
Wisconsin:		
Western	1	
Eighth Circuit:		1
Arkansas:		
Eastern	2	
Iowa:		
Southern	1	
Minnesota:		
Missouri:		
Eastern	1	
Western	2	
South Dakota:	1	
Ninth Circuit:		5
Arizona:	3	
California:		
Eastern	3	
Central	1	
Southern	2	
Nevada:	1	
Oregon:	2	
Washington:		
Eastern	1/2	
Western	1-1/2	
Tenth Circuit:		1
Colorado:	2	
Kansas:	1	
New Mexico:	1	
Oklahoma:		
Eastern*	2	
D.C. Circuit		3

\*Realignment: See Report

### Other Action

In addition, the Judicial Conference approved as an emergency measure, the recommendation that the Congress create three additional circuit judgeships in the District of Columbia Circuit. The Conference noted the sharp rise in

the number of appeals filed per judgeship in the first six months of fiscal 1976, with the largest increase occurring in the number of appeals from administrative agencies which rose by more than 100 percent.

The Judicial Conference also reaffirmed its support of legislation which would raise the daily jury attendance fee from \$20 to \$30 and which would equate the allowable travel and subsistence expenses of jurors to the rates established by the Director of the Administrative Office for supporting court personnel in travel status.

Additionally, the Director of the A.O. was authorized to transmit several bills relating to jury administration which had not been acted upon by the 94th Congress to the 95th Congress in the form of an omnibus bill encompassing the following proposals:

- A bill to establish a presumption that the use of voter registration lists as the source of juror names is consistent with the policies of community cross-sectionality and non-discrimination in the selection of federal juries (transmitted in draft form on May 21, 1976);
- A bill to provide in civil cases for juries of six persons and to reduce the allowable peremptory challenges from three to two (pending as H. R. 6039 and S. 237);
- A bill to amend the Federal Employers' Compensation Act by adding a new section providing for work injury coverage of federal petit and grand jurors in the performance of their duties (transmitted in draft form on March 24, 1975);
- A bill to clarify the qualification section of the Jury Selection and Service Act, 28 U. S. C. § 1865 (b) (5), with regard to service by persons

whose civil rights have been restored, by deleting the phrase, "by pardon or amnesty" (pending as H.R. 6050);

- A bill to add to the Jury Selection and Service Act further definitions relating to jury selection by electronic data processing (pending as H. R. 6051).

The Conference reaffirmed its support of S. 2923, a bill to amend the statutory ceiling on the salaries of magistrates, and authorize, subject to the enactment of S. 2923, an increase in the salaries of those full time magistrate positions from \$31,500 to \$37,800.

The Judicial Conference received a report that during fiscal 1976 approximately 48,000 persons were represented by assigned counsel or by special defender organizations established pursuant to the Criminal Justice Act. The sum of \$19,046,000 was appropriated for implementation of the Act in fiscal 1976. The cost of operating the 22 federal defender offices during fiscal 1976 was approximately 4.8 million dollars. During that period, the federal public defenders were assigned to 11,751 cases at an overall average cost of \$407 per case.

The Conference was advised that an advisory committee of experienced public defenders had completed a basic federal criminal practice manual for use by all who represent defendants under the Criminal Justice Act.

The A. O. will assume the responsibility for printing and distributing the manual and it is intended that it will be provided free to each federal judge and to all attorneys, including federal defenders who are subject to appointment under the Criminal Justice Act. Copies will also be made available to others at a cost not to exceed \$5.00.



(CONFLICT from page 1)

of Columbia Court explicitly declined to follow a case decided by the Ninth Circuit last March, in which it was held that "excludable time" does not apply to the interim time limits. *United States v. Tirasso*, 532 F.2d 1298.



Pictured above immediately prior to meeting of the Library Study Advisory Committee are (l. to r.) Judges Joseph H. Young (D.Md.), FJC Director Walter E. Hoffman, John D. Butzner, Jr. (CA-4), and Joseph T. Sneed (CA-9).

#### LIBRARY STUDY ADVISORY COMMITTEE MEETS AT FJC

With draft of a preliminary report in hand, the Advisory Committee to the study of the federal court libraries met at the Center this month to review the report and make suggestions.

The preliminary draft submitted by Project Director Raymond M. Taylor follows a year's study of all federal court libraries—how they are operated, how books for the libraries are ordered and used, and what personnel staff the libraries. The Advisory Committee members, who are a group of federal judges, librarians (public and private) and a Circuit Executive had several suggestions which will now be considered for inclusion in a final report.

An additional product of the library study is a comprehensive inventory of all law books in the federal court system.

## Bulletin

### ATTENTION: ALL BANKRUPTCY JUDGES, COURT CLERKS AND BANKRUPTCY CHIEF CLERKS

Berkeley Wright, Chief of the Division of Bankruptcy of the Administrative Office, advises that with the passage of P. L. 94-550, it is no longer necessary that a false statement be made under oath in order to constitute a crime under §152 of Title 18.

Accordingly, the affidavit forms which now appear on the reverse side of bankruptcy official forms 10, 26, 27 and 27A should be modified to comply substantially with the illustrative certification of service forms which were mailed to you in December.

When the current stock of these forms is depleted, the appropriate certification of service will be printed on the new forms, but until this is done, bankruptcy officials and court clerks should immediately modify the bankruptcy official forms as specified.

It is the view of the A. O. that P. L. 94-550 is equally applicable to any bankruptcy forms which may require verifications.

### BANKRUPTCY FILINGS DROP

According to figures provided by the A. O. Bankruptcy Division, during the five-month period from July 1976 through November 1976, 90,795 bankruptcy petitions of all types were filed in United States District Courts.

This represents a 15.2 per cent decrease from the 107,125 cases filed during the same period a year ago.

The drop in filings comes in the Consumer Bankruptcy and Chapter XIII area. There was an increase in the small but growing number of Real Property Arrangements under Chapter XII of the Act. It is estimated that approximately 220,000 bankruptcy filings will be filed in the twelve-month period ending June 30, 1977, according to Bankruptcy Division Chief Berkeley Wright.



Publications are listed for information only. Those in **boldface** may be ordered from the FJC Information Services.

- Alternatives in Dispute Processing: Litigation in a Small Claims Court. Austin Sarat. 10 Law & Society Rev. 339-375 (Spring 1976).

- **Federal Judicial Center Annual Report 1976.**

- Independence under International Law. Edward Dumbauld. LXX Am. J. of Int'l. L. 425-431 (July 1976).

- Justice on Appeal. Paul D. Carrington, Daniel J. Meador, Maurice Rosenberg. West, 1976.

- Law and Technology Symposium: Coping with Computer-Generated Evidence in Litigation. 52 Chi.-Kent L. Rev. 545-620 (1976).

- Legal system, a Social Science Perspective. Lawrence M. Friedman. Sage, 1975.

- The Myth of the Unwilling Juror. William R. Pabst, Jr., G. Thomas Munsterman, Chester H. Mount. 60 Judicature 164-171 (Nov. 1976).

- On the Pursuit of Competence. Paul D. Carrington. 12 Trial 36-38 (Dec. 1976).

- Speedy Trial Act of 1974. Richard S. Frase. 43 U. of Chi. L. Rev. 667-723 (Summer 1976).

- Standards of Attorney Competency in the Fifth Circuit. Reagan W. Simpson. 54 Tex. L. Rev. 1081-1114 (June 1976).

- A Technique of Settling Cases. Stanley N. Ohlbaum. 15 Judges' J. 60-62 (Spring-Summer 1976).

- A Viable Alternative to Plea Bargaining. Gerald J. Levie. 52 Los Angeles B. J. 158-161 (Oct. 1976).

- Videotape: Prerecorded Trials—a Procedure for Judicial Expediency. 3 Ohio N. L. Rev. 849-902 (1976).

## COMMITTEE OF THE JUDICIAL CONFERENCE TO CONSIDER STANDARDS FOR ADMISSION TO PRACTICE IN THE FEDERAL COURTS

On September 22 the Committee of the Judicial Conference to Consider Standards for Admission to Practice in the Federal Courts held its first meeting at the Supreme Court building in Washington.

Chief Justice Burger appointed this committee of twelve federal judges, ten of whom are district court judges, six legal educators, and six trial practitioners, pursuant to a September 1975 resolution of the Judicial Conference calling for a study of the national applicability of the recommendations made by a committee of the Second Circuit on minimum bar admission qualifications.

Chief Judge Edward J. Devitt (D. Minn.) is the chairman of this committee. Professor John E. Kennedy of Southern Methodist University Law School is the reporter to the committee. Staff assistance to the committee is being provided by the Office of General Counsel, Administrative Office of the U. S. Courts and the FJC.

The committee is concerned with determining what attributes qualify a person to litigate cases in federal courts and whether there is a present need for improving the level of advocacy of the federal trial bar. The committee will consider possible methods for obtaining improvements if it ascertains that substantial need for such exists.

At the September meeting a diversity of viewpoints were expressed but the committee generally agreed that the first mission of the committee would be to develop a research predicate for any recommendations it may ultimately make. Accordingly a subcommittee on procedures and methods was appointed to suggest a program of research and

study for the full committee.

Such subcommittee prepared, in conjunction with the staff of the Federal Judicial Center and the Administrative Office of the United States Courts, a program outline for the work of the full committee.

A primary segment of that program is a research effort to be undertaken by the Federal Judicial Center. This research will include questionnaires sent to district and appellate court judges, a sampling of trial lawyers, case reports by judges, and videotape experiments to examine whether there is a need for substantial improvement in advocacy performances and, if so, in what area such needs are most acute.

Simultaneously, the subcommittee recommended that a notice of the committee's existence and concerns be widely circulated with an invitation for all interested parties to make written comment to the committee about its work. Additionally, regional public hearings were recommended to enable persons who so desire to engage in dialogue with the committee.

At the December 9-10 meeting of the full committee in San Antonio, Texas, the committee adopted in principle the recommendations of the subcommittee subject to refinement by that subcommittee. In addition, several speakers addressed the committee at the San Antonio meeting with respect to how the committee might engage in its work and what its ultimate recommendations might be.

At the San Antonio meeting three law student consultants recently appointed to the committee by the Chief Justice were introduced. Judge Devitt also created subcommittees to study rules for law student practice in the federal courts and to determine what other professions are doing with respect to maintaining their professional standards.

The next scheduled meeting of the committee will be in Carmel, California on April 18-19. This





meeting purposefully coincides with the spring meeting of the Conference of Metropolitan Chief Judges so that an exchange of ideas between the two groups can be facilitated.

At the present time the committee welcomes input from all interested parties on the nature of the level of advocacy in the federal courts and what, if anything, the committee can or should recommend about the adequacy of the trial bar.

Correspondence with the Committee should be addressed to the Chairman of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Attention Carl H. Imlay, General Counsel, Administrative Office of the United States Courts, Supreme Court Building, Washington, D.C. 20544.

## CHIEF JUSTICE ISSUES YEAR-END REPORT ON THE FEDERAL JUDICIARY

Early this month Chief Justice Burger issued a year-end Report on the Federal Judiciary which, among other things, called for the creation of the long delayed additional judgeships to handle the steadily growing caseload and for some limited form of review procedure to eliminate sentencing disparity.

Here are the high points of the Chief Justice's year-end report. [A full text of the Report is available from the FJC Information Service.]

- The "Pound Revisited Conference" was important because it launched a probing assessment of the forms and procedures we use to administer justice. As an immediate result of the conference, the ABA has created a Special Committee on Resolution of Minor Disputes which is examining alternatives to litigation such as wider use of arbitration, mediation, ombudsmen and in-

formal neighborhood justice centers. A national conference on minor dispute resolution will be convened in New York City in May by the ABA.

- Continuing legal education programs are developing and four states, Iowa, Minnesota, Wisconsin, and Washington make attendance at these programs mandatory.

- There has been a sharp increase in trial advocacy programs for lawyers and law students, developed by professional associations and law schools.

- We are moving toward the development of higher standards for admission to practice before the federal courts. A committee of the United States Judicial Conference is presently studying ways to determine standards for admission to try cases in the federal courts.

- The bar is increasingly recognizing its obligation to discipline those lawyers who betray professional trust.

- With the new codes of legal responsibility and judicial ethics and enforcement staff, more law schools and state bars are requiring students to study legal ethics.

- The leaders of the Judiciary Committees of the Senate and House merit commendation for recent developments: Magistrates are now given additional duties, enabling district judges to spend more time on trials and less on pretrial procedures and routine matters.

The use of special three-judge district courts has been substantially abolished, which will give some relief to federal courts.

With the adoption or expansion of merit selection systems for judges in Florida, Maryland, Nevada and North Dakota, in 1976, a majority of states now use merit selection. The federal system has also evolved in this direction. Upon the request of recent Presidents, nominees have been screened by the ABA Committee on the

Federal Judiciary.

The need for new judgeships continues to grow. After careful analysis, the Judicial Conference recently recommended creation of 106 district judgeships and 16 new judgeships in the Courts of Appeals; about one-half of these have been identified as needed four years earlier. Case filings in the Courts of Appeals will have increased more than 140 percent between creation of the last new circuit judgeships of 1968 and the authorization and filling of any new judgeships.

Federal judges, with the aid of new techniques and research of the Federal Judicial Center, have continued to improve their procedures and they have been willing to work longer days. As a result, the average federal judge completed work on 36 percent more cases this past year than eight years ago.

- Court filings were up 11.3 percent in fiscal 1976 to 130,597. Dispositions increased 5 percent.

District Courts are complying with time limits imposed for trial of criminal cases, but some overloaded courts have not been able to try a civil case in many months, other than emergency matters.

- Some form of review procedure of sentences is needed to deal with the problems of disparity but it must be fashioned so as to avoid further overburdening of the Courts of Appeals, which already have impossible caseloads.

- This year-end is a good time to pay tribute to the great service rendered by the Senior Federal Judges—notably Mr. Justice Tom Clark, who accepts assignments to sit in every corner of the country. Presently, there are 163 Senior Federal Judges, virtually all of whom, literally, "work for nothing"—and "keep the ship afloat."







(Above) Judicial Fellows Program finalists and their spouses attend luncheon briefing held for them this month at the Federal Judicial Center. Judge Walter E. Hoffman, Center Director, is at the far right (standing).

### LEAA DEVELOPS MODEL SENTENCING GUIDELINES FOR STATE COURTS

The Law Enforcement Assistance Administration has developed model sentencing guidelines which are being implemented in Denver, Colorado, and courts in Chicago, New York and Philadelphia are currently developing their own model guidelines.

The guidelines which are aimed at minimizing disparity in sentencing were developed as the result of a recently completed two-year study administered by the Criminal Justice Research Center, Inc. of Albany, New York. The guidelines will be implemented in several cities during 1977.

Using the Denver sentencing guidelines, persons sentenced in the future by judges in that city's six criminal courts, will be sentenced under the model guidelines. A judge may sentence outside the guidelines but he must

provide explicit written reasons for doing so.

Judge James C. Flannigan, the Presiding Judge of the Court's Criminal Section, and a member of the steering and policy committee that formulated the guidelines, candidly admitted he had considerable reservations in the early stages of the program:

"At first I was very skeptical with a rather negative attitude. But when I learned what was to be done and as we met from time to time, my negativism receded and I became more enthusiastic. Sentencing remains a big problem for a judge—something that gives him great concern. He realizes he is dealing with the life not only of the man appearing before him, but of all others related to him—his wife, children, parents, and others."

[Copies of the 175-page final report are available from the LEAA, Washington, D. C. 20530.]

### CA-2 LAWYER DELAYS TRIAL: \$1,500 COSTS ASSESSED

The Second Circuit Court of Appeals recently upheld the decision of the Eastern District of New York which ruled that an attorney who had recklessly delayed the beginning of a criminal trial should be forced to pay \$1,500—\$500 for each day of delay.

The opinion of the Court of Appeals, authored by Judge Thomas J. Meskill, said that the attorney who was scheduled to appear before Judge Thomas C. Platt, Jr. (E. D.—N. Y.) failed to inform Judge Platt that he had another trial which would conflict with the trial scheduled to begin before Judge Platt.

The Court of Appeals upheld the local rule of the Eastern District of New York, Rule 8(b), which authorizes district judges to assess reasonable costs directly against counsel whose action impedes the effective administration of the court's business.

Judge Meskill said that "we are hopeful that our decision will have a positive effect by deterring recklessness by trial lawyers of the federal courts."



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## COURTRAN II UNDERWAY IN NORTHERN DISTRICT OF ILLINOIS

The Courtran II Criminal Case System, which includes docketing and speedy trial reporting via on-line terminals, has started into operation in the U.S. District Court for the Northern District of Illinois.

Chief Deputy Clerk, Charles Vagner, and Deputy Clerks Carole Cuculich and Perry Moses,



Judicial Fellow Jack Buchanan illustrates a statistical report which can be produced at the terminal. This is one type of terminal used to enter docketing information into the Courtran system.

spent a week at the Computer Center at the U.S. District Court for the District of Columbia testing the system and learning how to use it effectively before returning to their Court to start operations. They are now training other members of the Illinois Northern Clerk's Office in entering criminal case data via the terminals into the central computer. When the Chicago team has completed their testing, operations will start in five other pilot District Courts—C. D. Cal., U. D. Cal., E. D. Mich., D. C. and U. D. N. Y.

Initial training for individuals from the additional five courts will be conducted in Chicago by personnel from the Illinois Northern Clerk's Office and the Federal Judicial Center. Center staff members will subsequently spend the week conducting additional training in each of the five courts.



Carole Cuculich, Deputy Clerk of the U.S. District Court for the Northern District of Illinois, enters information from Illinois Northern criminal dockets as Center staff members Richard Fennell and John Allen, and Center Director Judge Hoffman, observe.

When the system is fully operational, Docket Clerks will enter information on criminal cases directly into the computer rather than entering the information on a number of separate forms as is the present practice.



Perry Moses, Deputy Clerk in the U.S. District Court for the Northern District of Illinois, asks Michael Marean of the Center staff to check a Speedy Trial data report to be sure the system is operating correctly.

This information will be entered into the Courtran system using terminals located in each court.

The Federal Judicial Center has established a nationwide telecommunications system for the

transmission of case information from courts to the Courtran computers.

The network provides Judges, Deputy Clerks and other interest-



Chief Deputy Clerk of the U.S. District Court for the Northern District of Illinois, Charles Vagner, one of the key persons responsible for the design of the system, studies a calendar report as Center Deputy Director Joseph L. Ebersole, looks on.

ed personnel with immediate access to all relevant data via electronic display. When desired, hard copies of display information can be immediately produced.

Courtran is designed to support the entire range of Clerk's



Jack Pickett, one of the Center's computer operators, starts a disc file into operation. These discs are the "file cabinets" for all computerized information. Docket information on thousands of cases from many districts can be stored on the two discs shown here.

Office functions including case scheduling, caseload management, Speedy Trial monitoring and reporting, and statistical reporting to the Administrative Office of the U. S. Courts.



# aoajc calendar

- Jan. 31-Feb. 3, 1977 Seminar for Federal Public Defenders, Ft. Lauderdale, Fla.
- Jan. 31-Feb. 4 Videotape Equipment Workshop, Washington, D. C.
- Jan. 31 Judicial Conference Magistrates Committee, New Orleans, La.
- Jan. 31-Feb. 1 Judicial Conference Committee on Court Administration, Key Biscayne, Fla.
- Feb. 1-3 Advanced Management Workshop for Supervising U. S. Probation Officers, Charleston, So. Carolina
- Feb. 2-4 Judicial Conference Review Committee, Key Biscayne, Fla.
- Feb. 3-4 Judicial Conference Committee on the Criminal Justice Act, Ft. Lauderdale, Fla.
- Feb. 3-4 Judicial Conference Advisory Committee on Judicial Activities, Key Biscayne, Fla.
- Feb. 3-4 Meeting of FJC Board, Key Biscayne, Fla.
- Feb. 4 Judicial Conference Committee on Bankruptcy, Miami, Fla.
- Feb. 4 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, Fla.
- Feb. 7-9 Workshop for District Judges, Seattle, Wash.

## THE THIRD BRANCH

VOL. 9, NO. 1 JANUARY 1977

THE FEDERAL JUDICIAL CENTER

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WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

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- Feb. 11-12 Judicial Conference Appellate Rules Committee, Williamsburg, Va.
- Feb. 14-18 Advanced Seminar for U.S. Probation Officers, San Diego, Calif.
- Feb. 14-18 COURTRAN Training Workshop, Chicago, Ill.
- Feb. 22-23 In-Court Management Training Institute, San Diego, Calif.
- Feb. 24-25 In-Court Management Training Institute, San Francisco, Calif.
- Feb. 28 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, D. C.
- Feb. 28-Mar. 3 In-Court Management Training Institute, Honolulu, Hawaii

## FEDERAL RECORDS COMMISSION DISCUSSES DISPOSITION OF JUDICIAL RECORDS

The Study Commission on Records and Documents of Federal Officials met for two days at the Federal Judicial Center last month to discuss the disposition of judicial records.

Representing the Judiciary at the meeting was Judge J. Edward Lumbard (CA-2), the only member of the Commission representing the Judicial Branch. However, at this meeting two additional federal judges served as panelists, Judges Carl McGowan (CA-DC) and Gerhard A. Gesell (Dist.-D.C.).

The discussion focused on the disposition of three categories of

judicial documents: the administrative files of the courts which are usually in the custody of the clerk; the private papers of judges including letters and diaries; the confidential public documents such as working papers, draft opinions and documents relating to the confidential judicial deliberations of the judges.

The panelists and Commission members agree that the administrative files of the courts should be open to the public but that the private papers of judges are the private property of the judges; that he should be encouraged to make them available to historians because they often reflect the character of the judge and the character of the judge is often reflected in the judicial process. As far as the third category was concerned—the confidential public documents—it was generally agreed that these are written extensions of confidential deliberations and should remain confidential. Reference was made to the discussions held by the Supreme Court during its confidential conferences and the fact that "What is said there stays there".

Some Commission members suggested that it might be wise for the Judiciary to establish its own system of archives in order to maintain control over the documents of judges. The final report of the Commission will be submitted to the President and the Congress on March 31.

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# The Third Branch

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## Bulletin of the Federal Courts

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FEBRUARY 1977

## JUDICIAL PAY INCREASES TAKE EFFECT

On February 20, the first substantial salary increases for Supreme Court Justices, judges of both the Circuit Courts of Appeals and the District Courts as well as some senior members of the judiciary went into effect automatically.

The salary increases were proposed by former President Ford when he submitted his budget to Congress on January 17. President Ford submitted his proposals after receiving the Recommendations of the Commission on Executive, Legislative and Judicial Salaries December 2.

Under Section 225 of P.L. 90-206, the salary recommendations of the President automatically go into effect "...at the beginning of the first pay period which begins after the thirtieth day following the transmittal of such recommendations in the budget..." unless neither the House of Representatives nor the Senate enacts legislation specifically disapproving all or part of the recommendations.

In this instance, however, the leaders of both Houses of the Congress supported the President's pay proposals and efforts to disapprove them, in whole or in part, were unsuccessful.

These are the first substantial salary increases for federal justices and judges since March 1, 1969. The salary commission said in its report to the President, "For the

last eight years, the highest officials of all three branches of the federal government have received only one increase in salary, a nominal 5% cost of living increase. During this time, average private wages increased by 70% and the consumer price index went up more than 60% and general civil service pay increased by 65%." The Commission added that testimony presented before it "indicated that it is even becoming increasingly difficult to recruit and retain highly skilled and able attorneys to take positions in the Federal judiciary."

Here are the present pay levels, those submitted by the salary commission, and the President's proposals submitted to Congress in January which will go into effect for the Judiciary on March 1:

	Present Salary	Recommendation of Salary Commission	New Salary
Chief Justice	\$64,600	\$80,000	\$75,000
Associate Justices	\$63,000	\$77,500	\$72,000
Circuit Judges	\$44,600	\$65,000	\$57,500
District Judges	\$42,000	\$62,000	\$54,500

### CHIEF JUSTICE PRESENTS REPORT ON THE JUDICIARY

Chief Justice Warren E. Burger in his address to the American Bar Association during its midyear meeting in Seattle this month called for, among other things, the elimination of diversity jurisdiction, the division of the Ninth and the Fifth Circuits into three administrative units each, the creation of 132 new judgeships and the establishment of a National Institute of Justice.

Here is a summary of the Chief Justice's Report on the State of the Judiciary. (The full text is available from the FJC Information Service.)

The Chief Justice commended the American Bar Association for taking the leadership in crucial areas which weighed heavily in bringing about the establishment of the Institute for Court Management, the National Center for State Courts and Circuit Executives positions, with all groups working together to eliminate the problems of delay, congestion, and excessive expense in the resolution of disputes.

The very complexity of the Government today seriously impedes communications among its parts and branches. The Judicial Branch lacks facilities generally available to the departments of the Executive in pressing its positions to the Congress and as a result, needed legislative action is

(See CHIEF JUSTICE, page 2)



(CHIEF JUSTICE from page 1)

often delayed and some actions are taken without awareness of the consequences on the work of the courts.

The Chief Justice also:

- Cited three examples which illustrate the tendency of Congress constantly to add to the jurisdiction and functions of the federal courts without simultaneously providing the people necessary to do the work. [The examples he used were Speedy Trial Act of 1974, the Regional Bail Reorganization Act of 1973, and the Temporary Emergency Court of Appeals.] The critical factor is that Congress should act with an awareness of the consequences on the courts when it legislates and should provide adequate tools. The Chief Justice again urged, as he has since 1972, that Congress establish, by rule or resolution, a procedure requiring each committee, upon reporting a bill affecting the federal courts, to submit with the legislation an impact statement.

- Reported that it is now imperative that we have not 65 new judgeships but approximately 132—107 district judgeships and 25 circuit judgeships.

- Urged that Congress totally eliminate federal jurisdiction in diversity of citizenship cases which comprise nearly 20 percent of the district court filings.

- Urged, since both the Ninth and Fifth Circuits are so large, that Congress should now proceed promptly to divide the circuits into three administrative units.

- Suggested, also, that Congress authorize the Judicial Conference to divide the Circuits into administrative units, subject to a veto by the Congress.

- Endorsed the concept of establishing a Presidential judicial nominating commission in each circuit to evaluate appointments for the Court of Appeals and said he hoped that this concept will be used on a state basis to evaluate lawyers considered for district court appointments, and that this

would, in fact, increase the percentage of judges rated "exceptionally well qualified" by the American Bar Association.

- Called for the creation of a permanent Commission on the Judiciary that would carry on a continuing study of the problems and the needs of the Judicial Branch, and make periodic reports directly to the Judiciary Committee of the House and Senate, the President and the Judicial Conference of the United States. One of the key functions of this Commission would be to improve communication between the Judicial, Legislative, and Executive Branches of the Government.

- Recommended the creation of the National Institute of Justice which should be essentially a grant organization, a highly specialized extension of the concept of revenue sharing. This organization would act as a mechanism to give to state courts the financial aid which realistically, they are unable to secure from their own hard-pressed state legislatures.

#### A. O. DIRECTOR OUTLINES LEGISLATIVE PROGRAM

Rowland F. Kirks, Director of the A.O., testified this month before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice and outlined for the Committee the new legislation which the A.O., on the recommendation of the Judicial Conference, intends to send to the Congress this year.

He said that approximately thirty requests for new legislation will be sent to the House Subcommittee in addition to legislation which will go to other committees which deal with the creation of new judgeships.

He testified that the time has come for Congress to reexamine the jurisdiction of district courts and mentioned that during the previous Congress legislation was transmitted which would have amended the jurisdictional statute on diversity of citizenship to prevent a plaintiff from filing a

diversity action in a district court located in a state in which he is a citizen.

In addition, he said the Judicial Conference also commented favorably on legislation introduced in the Senate to increase the amount in controversy required in diversity cases from \$10,000 to \$25,000.

"At its session next month, the Judicial Conference will consider a strong recommendation from one of its committees that the diversity of citizenship jurisdiction of the federal courts be abolished. The action of the Conference will be reported to the Congress before the first of April."

On the subject of jury administration, he told the Subcommittee that the Judicial Conference has recommended the repeal of 28 U.S.C. 1863(b)(7) permitting the automatic exclusion of prospective jurors who must travel a great distance to attend court. Increases in attendance fees from \$20 to \$30 per day and certain juror expenses such as travel also will be recommended as well as legislation to protect the employee rights of persons who are called for jury service.

"We are also preparing an omnibus bill which would create a presumption that the use of voter registration lists is consistent with the cross-sectional selection of juries; provide for a jury of six persons in civil cases with a reduction in allowable peremptory challenges from three to two; provide Federal Employee Compensation Act coverage for jurors who are injured in the performance of their duties; permit persons whose civil rights have been restored to serve on juries and make administrative changes in the Act to facilitate the use of electronic data processing in jury selection."

He said that the Judicial Conference has asked that the entire subject of filing fees be reviewed and is suggesting that the Conference be given the authority to fix all fees.

Turning to the subject of Magistrate judges,

(See KIRKS, page



The following editorial from the February 15, 1977 issue of The Washington Post was reprinted with permission from The Washington Post Company.  
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## JUDICIAL IMPACT STATEMENTS

THERE WAS SNICKERING five years ago when Chief Justice Warren E. Burger suggested that Congress create something he called a judicial impact statement. But nobody ought to be snickering now. The federal court system is buried in cases and many of them are the result of legislation that Congress has passed in recent years without paying much attention to what the new laws would do to the courts.

The Chief Justice renewed his plea over the weekend in Seattle and documented his argument unusually well. He noted that earlier this month Congress directed that all cases arising under the emergency natural gas bill be handled by the Emergency Court of Appeals. That sounded fine when it was proposed, especially since that court was set up in 1973 to handle such cases. But guess what? Congress never provided any judges for it. Its members are drawn from other federal courts and 13 different judges have sat on it in the last four years in order to spread the work around. And Congress, of course, never provided the other courts with new judges to replace those who were being used on

this new one.

The same thing happened with the railroad reorganization act. Congress created a special three-judge court to handle the bankruptcies of the eastern railroads, but provided no judges for it and no replacements for the three judges who were pulled from other courts to sit on it.

The lesson is obvious. Congress ought to do what the Chief Justice wants. It created environmental impact statements to help all of us understand better the effect on the world around us of various federal projects. It has created its own internal budget impact statements so its members can have an idea of how much a particular proposal will cost in future years. It ought to do the same kind of thing for the courts so it can provide enough judges to handle efficiently and expeditiously the cases it wants decided.

The present situation is absurd. The Chief Justice says the federal courts now need 132 new judges just to keep up with their present work. If he is right—and the evidence suggests his number is in the ball park—the judiciary is falling farther and farther behind every day.

(KIRKS from page 2)

ates, he said that the Conference has proposed amendment to the Federal Magistrate's Act intended to enlarge the trial jurisdiction of magistrates in certain misdemeanor cases. Magistrates, probation officers and pretrial service officers are not now included in the statute making it a crime to kill or injure certain officers or employees in the performance of their duties. The Conference believes that this

added protection should be provided to all officers and employees of the Judicial Branch whose duties involve a degree of personal danger.

Here are other matters which Director Kirks said may come before the Subcommittee this session:

- A bill to provide for legal assistants in the U.S. Courts of Appeals.
- Legislation relating to the

(See KIRKS, page 8)

## SPOTLIGHT INTERVIEW



Sherman R. Day

What is the National Institute of Corrections and what is the group currently doing? In the following interview, the Institute's Director, Sherman R. Day, answers in detail these questions and explains how the new organization may contribute to key correctional changes in what many observers believe have been the most neglected correctional units in the Nation: the thousands of local jails where federal as well as state inmates often spend months prior to and after trial.

Director Day is the former Administrator for Staff Development for the Bureau of Prisons and has been Associate Dean, Academic Programs, and Professor of Urban Life at Georgia State University. He holds a Doctorate in Education from the University of Georgia and has written extensively on such topics as *Innovations in Group Counseling* and *Interpersonal Communications*.

**Would you describe the purpose of the National Institute of Corrections?**

The National Institute of Corrections was created to be a leadership resource for state and local corrections. We hope to accomplish this mission through a variety of activities including staff development, research and evaluation, information sources, standards development and technical assistance.



### **What staff do you have?**

We are a very small agency. We are authorized 26 staff and a total budget of approximately \$5,000,000.

### **What lessons, if any, can we learn or gain from your experience with state prisons?**

We ourselves are still learning. However, we have become very aware of what a disparity there is both at the state and local level. Operations and programs range greatly in quality and quantity. We have also learned first hand how fragmented our correctional system or "non system" is in this country.

### **Could you give us an example of what you are either doing or have done with regard to improving the conditions in the jails?**

The improvement of our Nation's jails is a major priority and program thrust for NIC. One example of our activity is our plan to establish a stable training, information and technical assistance center on jails.

### **What will that do?**

The Center will serve three functions. It will serve as a training center for people who manage jails such as a sheriff or correctional administrator. It will serve as a base for technical assistance activities to state and local jails which seek help in jail management, operations or programs. The Center will also be an information center for jailers, elected officials or citizens.

We consider jails as the most overlooked and neglected area of the whole correctional system.

### **A few federal judges, as you may be aware, have been critical of the Federal Prison System. Do you see the same thing at the local level — federal judges and state judges becoming more critical of the jail system?**

There is no question the federal judiciary has been one of the prime movers for reform at all levels of corrections. While correctional administrators are not always happy with the decisions that the federal judiciary renders,

by and large these decisions have resulted in progressive and constructive change. I think that you will find a great deal of judicial activity at the state and local levels.

### **Do you think that the states accept that as progressive?**

I think that the state officials see these decisions in a mixed way. State and federal administrators have for the most part been responsive to the courts and in many cases have appreciated court intervention. The courts have called to the attention of legislators, community leaders and the public the problems of state, local and federal corrections. Many of the decisions rendered by the federal courts cite conditions that have been apparent to correctional officials for years. In some cases these same officials have asked their elected leaders for assistance without success.

I do not want to imply that states always agree. However on balance, court intervention has produced improved correctional practice.

### **Do legislatures and administrators see the real problems?**

Most legislatures have been informed of the problems in corrections. However, corrections still receives low priority in comparison with other state and local activities. My experience is that staff correctional administrators are concerned.

The legislators have a tough situation. I think many are concerned. Corrections must compete for the dollar — corrections is down the ladder, way down the ladder. However, very recently, the media has called attention to the tremendous overcrowding problem in our Nation's prisons.

### **What's the reason for the overcrowding?**

Certainly increased number of people in the age range 20 to 30 has had an effect. Second, I think the public has influenced the attitude of releasing authorities; and third, judicial sentencing has been affected. When more people go to prison for longer periods and

fewer are released, the prisons suffer.

### **Both judges and lawyers are in disagreement on the role of the trial judge in inspecting premises where defendants are being held both prior to and after sentencing. Do you think this is an area in which the judge should be intervening?**

Ideally, I don't. I would like to see corrections receive the kind of support at state and local levels that would make it unnecessary for the judge to intervene. I hope the National Institute of Corrections as well as other agencies can be a resource to assist states and localities to take the necessary action that makes judicial intervention unnecessary. Reform should come from the profession itself. However, we have far to go before we achieve the maturity implied in my hopes.

### **Are you receiving acceptance?**

Yes. We have tried to work very closely with the profession. We have some advantages over other agencies. One, we are very small and hopefully more responsive. We are a very simple agency with a minimum of red tape. Chances are if you call the National Institute of Corrections, I will answer the phone.

### **Do some of the states with growing problems come to you and say, "We have a problem. What can you do to help us"?**

Yes, particularly in the jail area. The requests we have received affirm my belief that most correctional administrators want to improve their prisons and jails.

### **Could you describe the jail problem?**

The jail problem is a multifaceted one. One problem is inadequate staff, staff selection and training. In many places the officers are untrained in corrections. Another problem is the lack of systematic classification and screening of inmates to keep violent criminals separate from non-violent offenders, to identify mentally ill offenders, and to determine the level of supervision needed for pre-trial and sentencing.

(See DAY page



## ATTORNEY GENERAL BELL ADDRESSES ABA

Attorney General Griffin B. Bell addressed the ABA House of Delegates when it held its Mid-year Meeting in Seattle this month and outlined immediate plans which call for a close working relationship with the legal profession.

Though Judge Bell has addressed the House on other occasions as Chairman of the Association's Judicial Administration Division, it was his first appearance before this policy-making body as a member of the President's Cabinet.

Some of the Attorney General's plans call for:

- A unit within the Office of Legal Affairs of the Department of Justice to study and report on the impact of federal legislation affecting the federal courts. The Chief Justice as long ago as 1970, and as recently as February 13, when he addressed the ABA this month, said passage of all legislation affecting the federal courts should be accompanied by impact statements.

- Creation of a commission on merit selection of nominees for the U.S. Court of Appeals. (See related story page 10.)

- As for nominations for district judgeships, a separate merit selection committee will be constituted in cooperation with the Senators involved. Ultimately, they hope to develop a model plan which would, either totally or with modifications, be adopted in all the states.

- Merit selection procedures for the nominations of U.S. attorneys. At least five names would be submitted to President Carter, together with ratings, from which he would designate his choice for Senate approval.

- Creation of a new unit within the Department of Justice to be

called the Office for Improvements in the Administration of Justice. Daniel J. Meador, now a Professor of law at the University of Virginia, will head the new division.

The Attorney General invited close cooperation with the legal community in developing improved judicial administration, especially those matters affecting the federal courts. He expressed a special concern for civil rights.

### JUDICIAL ADMINISTRATION SEMINAR HELD

Twenty-two law professors, representing 17 law schools, and 22 judges representing 17 states, attended a three-day innovative program in Reno, Nevada, last month, which was jointly sponsored by the ABA's Committee on Education in Judicial Administration and the National College of the State Judiciary.

The goal of the seminar was to look at the ideal systems and procedures as presented in textbooks and classrooms and in turn discuss the realities of the court systems as they exist.

"The interaction seminar sought to bring about a better understanding of practical court administration and procedures and how best to inject this into the criminal and civil procedure courses in the law schools of this Nation," Judge Ernst J. Watts, Dean of the National College of the State Judiciary, said.

Among the key personnel who participated in this seminar were Dorothy W. Nelson, Dean of the University of Southern California School of Law and Chairman of the ABA Committee on Education in Judicial Administration; Professor Edward L. Barrett, Jr., of the University of California School of Law at Davis; Professor Maurice Rosenberg of the Columbia University School of Law; Professor Franklin E. Zimring of the University of Chicago Law School; and Harry O. Lawson, Colorado State Court Administrator.

During the seminar Dean Nelson said, "Law and court reform is the task of every judge, every member of the bar; every legislator, every court officer, every law student and every person who comes in contact with our far reaching system of justice at every point. If all law students are to be sensitized to the problems and the realities, it is important first to sensitize the law professors by examining the ideal vs. reality."

The group agreed law professors must take the responsibility of learning enough about the system so that they can communicate this reality in their teaching and scholarship. Legal doctrines need to be evaluated in terms of the real world in which they are applied.

This seminar had its origins in an initial series of meetings held at the Federal Judicial Center in 1973.

The work of the resulting committee was co-sponsored by the ABA and the FJC. At that time, many law students were complaining that their third year in law school was ill-structured while most judges believed that many new members of the bar were inadequately prepared to represent their clients in court and, as a result, were slowing down the judicial process.

One of the first decisions of the committee then was to bring together at the FJC a group of state and federal judges as well as selected law professors. The professors asked the judges to candidly explain what they were doing wrong and the judges candidly did.

As a direct result of this constructive confrontation, several judicial administration courses were shortly thereafter added to law school curricula, and at least six of the participating judges began teaching judicial administration-oriented courses.





## CHIEF JUDGE SEITZ SPEAKS ABOUT THE FUTURE OF THE FEDERAL JUDICIARY

Chief Judge Collins J. Seitz (CA-3), last month delivered an address entitled "Some Thoughts on the Future of the Federal Judiciary", in which he discussed judicial selection, the recent increase in the caseloads, and the need for additional judges.

He said that the calibre of the federal judges is at the heart of the judicial system. He outlined the present selection process in which politics often plays a major part and said that this is not particularly objectionable so long as an impartial grouping representing an appropriate cross-section of knowledgeable individuals can have an opportunity to express their views on whether the individual to be nominated is reasonably qualified.

However, he said what is lacking is some device which would bring to the attention of the President and the appropriate Senator, the names of qualified individuals who do not have political backing and that local bar associations should be more militant about asking their Senators to consult them routinely as to potential appointees.

Turning to the effect of the Speedy Trial Act on the federal caseload, Chief Judge Seitz said it has required district judges to give priority to criminal matters almost to the exclusion of civil litigation in many areas of the country.

Congress must grant relief by adding more personnel and reducing federal jurisdiction if the caseload problem is to be solved. In addition, he endorsed the proposal of Chief Justice Burger calling for a judicial impact statement for every piece of legislation which would affect the jurisdiction of the federal court system.

Looking into the future, he predicted that the Judiciary would become much larger and that the number of supporting personnel

will increase accordingly.

In addition, he said that most circuits have adopted various techniques to deal with the mounting caseload such as limiting oral argument and full opinions in many cases.

"I confess that I find the situation depressing. But, we of the Judiciary are dedicated to the objective that, within human limits, we will process all the cases we can while remaining faithful to our oath. . . After all — Justice under law — the ultimate objective of the Bench and the Bar, is indivisible."

## LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

### Bills Introduced

H.R. 1899, to authorize an additional seven judgeships for the United States Courts of Appeals, introduced by Mr. Rodino and pending in the House Judiciary Committee.

S. 181, to amend Title 18 U.S.C. so as to establish certain guidelines for sentencing, establish a United States Commission on Sentencing, and for other purposes, introduced by Senator Kennedy and eight other Senators, which is now pending in the Senate Committee on the Judiciary. In the House H.R. 470, H.R. 2312, H.R. 1182 are all comparable bills. In addition, S. 204, to establish the Federal Sentencing Commission has been introduced by Senators Hart and Javits.

S. 260, introduced by Senators Kennedy and McClellan would amend Title 18 U.S.C. so as to impose mandatory minimum terms with respect to certain offenses and for other purposes.

S. 11, to provide for the appointment of additional district

court judges was introduced by Senator McClellan and eight other Senators. This bill is in the same form as the legislation which passed the Senate last year. The House counterpart is H.R. 1181, which was introduced by Mr. Rodino and is now pending in the House Committee on the Judiciary.

**Attorneys' Fees.** Numerous bills have been introduced in this session which would authorize the court to award attorneys' fees to prevailing plaintiffs in a number of varying types of proceedings. In addition, some of the bills provide for attorneys' fees to be awarded during agency proceedings as well. S. 270, introduced by Senator Kennedy and 14 other Senators, has been referred to both the Committee on Government Operations and the Judiciary Committee. The bill has been the subject of a hearing, at which the Federal Trade Commission and public witnesses testified. The bill would amend the Administrative Procedure Act to permit awards of reasonable attorneys' fees and other expenses for public participation in federal agency proceedings and for other purposes. The bill would require an annual report of the Administrative Office on awards of attorneys' fees and litigation expenses against the United States.

**New Federal Criminal Code.** H.R. 2311, to codify, revise and reform Title 18 of the U.S.C. to make appropriate amendments to the Federal Rules of Criminal Procedure, to make conforming amendments to the criminal provisions of other titles of the U.S.C. and for other purposes, has been introduced in the House of Representatives. A Senate version is expected to be introduced shortly.





(DAY continued)

offenders. Basically, we need more research in many areas to determine what works and what is bad. Jails are very, very complicated operations. Jails need a guard force, a program staff, medical services, mental health services, and food services.

**Even if you have enough help, are they adequately trained?**

No, training is very limited. This is true from the line level to top management.

**Are there any good jails?**

There are some excellent jails. I hesitate to name them because I will leave somebody out, but there are some excellent jails. However, there are 4,000 American jails and most are substandard.

**Do you believe that adequate facilities exist in the states today to take care of specialized problems related to psychotics, narcotic offenders, and problems of youth offenders?**

No. And I can state that unequivocally. At the present time the majority of our states are hard pressed to provide adequate facilities — period. Many states have attempted to deal with specialized needs of the offenders you named. However, overcrowding has forced administrators to direct resources from these areas to merely funding beds.

**Do you advocate pretrial diversion?**

Yes, but quite frankly, we have not really "diverted" in most programs which are called diversion. We have merely cast a larger net and used diversion to supervise people previously released or placed on probation. I advocate diversion whenever possible. I advocate the least restrictive means of supervision necessary to insure protection of the public.

**Would you limit diversion to the first offender or youths?**

Certainly that would be the largest group, but the real answer depends on what people are diverted to.

**Did these problems precipitate the creation of the NIC?**

No. The National Institute of Corrections grew out of frustration with lack of coordination and fragmentation in corrections and a need for a center of correctional knowledge. We are the only organization whose unique mission is improving corrections.

**I suspect your institution has long been on the horizon without many of us knowing it.**

The idea, proposed as a National Academy for Corrections, has been around for many years. The concept gained momentum at the First Conference on Corrections in Williamsburg in 1971. Both the Attorney General and The Chief Justice called for the creation of a National Academy of Corrections to be the center of correctional learning. This was the beginning of NIC as we know it today. An ad hoc advisory board changed the name to the "National Institute of Corrections" to broaden the concept beyond training. The Institute received legislative sanction as part of the Juvenile Justice and Delinquency Prevention Act of 1974.

**Some judges feel that imprisonment is for punishment — not rehabilitation. Do you agree with this concept?**

I agree with this concept completely. I think that the function of the courts is to determine the punishment. I feel very strongly that once an individual is in prison, corrections people should provide every opportunity for programs commonly termed rehabilitation programs. If the goal of the court in sentencing is to rehabilitate the person, I can think of many other places that are more effective than prison. Rehabilitation does take place in prison as inmates are motivated to take advantage of the opportunities for self betterment. It is incumbent upon corrections to have quality education, vocational training, counseling, drug abuse programs and other opportunities available

to the offender. It is up to the offender to take advantage of these opportunities.

**Do you think sentencing disparity is still a major problem in state and federal systems?**

I think it is and I know inmates feel strongly about disparity. Judges have so much latitude today that I don't see how we can avoid sentence disparity. We are currently holding state sentencing seminars for judges and correctional administrators in the South-eastern part of the United States and other regional seminars may be held later.

**Should parole boards continue to exercise discretionary power?**

I personally think we need to test some of the recently adopted models before determining the fate of parole boards. I am happy to see some new models developing.

**Some judges, state and federal, feel that parole programs really serve to substitute their sentence for that judicially imposed. Do you think this is a valid criticism?**

From the point of view of inmates, many Parole Boards merely retry the case on the same information. Many boards don't take into consideration adjustment to the institution or program participation. Parole boards vary greatly in their criteria for release. I would hate to make a blanket statement.

**Is there any way that you can differentiate the problems of youth in jail?**

I'm for diverting most juveniles out of jails. If you mean young adults, they present different problems. There is no question that the youthful offender in prison is tougher to handle. They are usually more angry at society and the establishment. From the operational point of view, many of our youth prisons are among the toughest to operate. Youth tend to be more impulsive, less responsive and require greater supervision.



**Hasn't the profile of the prisoners changed?**

There have been major changes in the type of person that goes to prison. There is a greater proportion of hard core, physically aggressive, repetitive inmates in federal and state prisons. There are still inmates in institutions who could be placed in community programs or on probation without harm to the community. I do not believe this group is diminishing.

**This, of course, eliminates if it not reduces the opportunity for programs?**

Well, I hope not. Security and supervision is always going to play an important role in programs. However, we can be and many people have been creative in providing program opportunities even in maximum security institutions.

**What is the general attitude of state and local people toward decisions of the federal judiciary?**

I don't think it's nearly as bad as people think. Some administrators are in a bind. On one hand, they know what the federal judge is saying is right because they've been saying it for some time. On the other hand, their elected officials don't like the federal court meddling in their business. The reaction is very mixed.

**Should state and federal judges visit prisons?**

Yes — as often as possible. I know of no correctional administrator who isn't anxious for judges to visit their facilities. Visits sensitize judges to conditions both positive and negative and lead to a better understanding of conditions generally.

**Should they also look at jails?**

Oh, yes! When I say "institutions," I'm talking about jails and prisons.

**But, it's rare, isn't it, that a federal judge will visit a jail?**

Much rarer than we would like.

## **Sweaters, thermal underwear *de regueur***

### **CA-6 MAINTAINS MOMENTUM DESPITE RECORD COURTROOM COLD**

When the natural gas shortage struck the East this month, the Sixth Circuit Court of Appeals and the Federal District Court at Cincinnati took extraordinary measures to keep warm and simultaneously keep on top of their caseloads.

"We have not cancelled any court sessions because of the cold, but a couple of jury trials have been cancelled even though electric heaters have been placed in the jury boxes," Chief Judge Harry Phillips said.

Circuit Executive James A. Higgins reported that the natural gas supply at the courthouse was cut back at the end of January to the point that they would have just enough heat to keep the pipes from freezing. At first they were informed it would be just for three days. Later, however, they were advised that they would have to operate without sufficient heat until sometime in March.

The week of February 7 was the coldest period when temperatures in many parts of the courthouse ranged from 41 to 45 degrees. Most of the judges brought in electric heaters, wore long underwear, two sweaters and two pairs of socks in addition to their robes in an attempt to keep warm during court sessions.

Chief Judge Phillips and the six other members of the Court have managed to keep working during the lengthy cold spell by taking these extreme measures. As a result, the Court's docket, while still overwhelmingly high, is not mounting even higher, the Chief Judge said.

Judge Wade H. McCree, Jr., is no longer participating in the work of the court since his designation as Solicitor General. However, District Judges Robert L. Taylor (E.D. Tenn.), John Feikens (E.D. Mich.), and Eugene E. Siler, Jr. (E.D. Ky.) participated for one week each in the

work of the Circuit Court during the natural gas shortage.

Chief Judge Phillips said, "We had a choice whether to try these cases or adjourn and go home. I am really proud of our court for deciding to stay on the job and keep working under these conditions."

At the district court level, Chief Judge Timothy S. Hogan reported that the U.S. District Court at Cincinnati is also managing to stay in operation despite the frigid conditions in the court rooms as well as jury deliberation rooms.

In addition to Chief Judge Hogan, Judges David S. Porter and Carl B. Rubin have been working under the extremely cold conditions.

Both Chief Judges Phillips and Hogan pointed out that the supporting personnel were often suffering more than many of the judges because they had to stay in one place and attempt to perform their duties. Court reporters managed to keep operating their equipment by focusing strongly on electric lamps on their hands while they were taking down trial testimony.



(KIRKS from page 3)

retirement of both the Director of the A.O. and the Federal Judicial Center.

- Legislation to provide for the legal defense of judges and judicial officials sued in their official capacity.

- A bill to eliminate abuse prevalent under the habeas corpus statute.



## **The Third Branch**

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Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

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## ATTORNEY GENERAL CREATES JUDICIAL ADMINISTRATION OFFICE

Attorney General Bell has created a new unit within the Department of Justice to be called the Office for Improvements in the Administration of Justice. Daniel J. Meador, currently a University of Virginia Law Professor and former Dean of the University of Alabama Law School, has been nominated as an Assistant Attorney General in charge of the new office.

The restructuring of the work in the Department of Justice abolishes the Office of Planning and Policy, which worked only in the criminal law area, and expands and broadens the responsibilities to embrace all areas of judicial administration.

In announcing the nomination of Professor Meador, Attorney General Bell explained that the new unit would develop suggestions for improved procedures in criminal and civil litigation, the organization and jurisdiction of federal courts and effective and fair procedures in crime control and criminal justice administration.

Professor Meador hopes that he can work closely with all organizations functioning in the judicial administration area with special emphasis on cooperation with committees of the Judicial Conference of the United States. He has a keen interest in working with the rules committees of the Judicial Conference. The new unit will offer assistance in drafting legislation proposed by the Judicial Conference.

Professor Meador brings a wide range of experience and expertise to the Office. He has authored several books on judicial administration and has lectured at the Federal Judicial Center and elsewhere on subjects related to the federal courts. He was one of the leaders in the three-year project on appellate justice co-sponsored by the Federal Judicial Center and the National Center for State Courts.

## U. S. ADMINISTRATIVE CONFERENCE ADOPTS TWO COURT-RELATED RECOMMENDATIONS

The Administrative Conference of the United States at its Fifteenth Plenary Session, held December 9-10, 1976, adopted two Recommendations of interest to the Federal Judiciary. [The full text of the Recommendations are published at 41 Federal Register 56767 (December 30, 1976).]

**Recommendation 76-4** (Judicial Review Under the Clean Air Act and Federal Water Pollution Control Act) is intended to facilitate Congressional and judicial attention to a variety of problems which arise in the interpretation and application of the judicial review provisions in the two principal pollution statutes.

More specifically, the Recommendation urges that Congress amend the FWPCA to provide for centralized review of national standards in the District of Columbia Circuit as is now the case under the Clean Air Act. However, review of state implementation plans under the Clean Air Act, and review of regulations, standards or determinations affecting single states or facilities under the FWPCA should be decentralized in the circuit containing that state or facility.

In addition, one section in this part of the Recommendation is addressed specifically to the Judicial Conference:

A.4) Courts of appeals, when reviewing cases arising under the Clean Air Act or FWPCA, should utilize existing transfer powers to avoid undue duplication of proceedings, and Congress should amend the Acts or the transfer statute [28 U. S. C. §2112 (a)] to remove doubts about the authority of any court of appeals to transfer such cases to any other court of appeals to avoid undue duplication and in the interest of the administration of justice.

The Recommendation also urges that the time limits in both Acts for the filing of petitions to review regulations in the courts of appeals should be changed to 60 days, but that these time limits should be made inapplicable where the petitioner can show reasonable grounds for failure to file a timely petition. Furthermore, it is recommended that Congress amend both Acts to permit the validity of a regulation to be challenged in defense to an enforcement proceeding.

The Conference's Recommendation also urges that Congress take action to:

- Clarify the citizen-suit provisions in both Acts so that they cannot be read to furnish an alternative or premature review of questions that can be raised by petitions for review in the courts of appeals.
- Give courts of appeals exclusive jurisdiction over actions to compel or to postpone the issuance or revision of regulations, with remand to the EPA or district court where necessary, and enact a provision for transfers between courts of appeals and district courts.
- Make the notice requirements contained in the citizen-suit provisions applicable to those non-statutory review actions which allege grounds appropriate for the filing of a citizen suit.
- Make certain EPA actions reviewable in the courts of appeals which currently are not.
- Adopt a single test of standing under the two Acts.

**Recommendation 76-5** (Interpretative Rules of General Applicability and Statements of General Policy) urges Federal agencies normally to employ pre-adoption or post-adoption comment procedures when promulgating an interpretive rule of general applicability or statement of general policy.





## GO FJC calendar

- Feb. 28-Mar. 3, In-Court Management Training Institute, Honolulu, Hawaii
- Feb. 28-Mar. 4, Videotape Equipment Workshop, Brooklyn, New York
- Mar. 4, Judicial Conference Intercircuit Assignment Committee, Washington, D.C.
- Mar. 7-10, In-Court Management Training Institute, Los Angeles, Calif.
- Mar. 10-11, Judicial Conference of the United States, Washington, D.C.
- Apr. 18-19, Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Carmel, Calif.
- May 17 Judicial Conference of the Court of Customs and Patent Appeals, Washington, D.C.

## PERSONNEL

### Elevation

Gerald J. Weber, Chief Judge, U.S. District Court, W.D.Pa., Dec. 20.

### Deaths

Richard B. Austin, U.S. Senior Judge, N.D.Ill., Feb. 7.

John S. Hastings, U.S. Senior Judge, 7th Cir., Feb. 7.

## THE SOURCE

The Information Service  
of the Federal Judicial Center

Publications are listed for information only. Those in **boldface** may be ordered from the FJC Information Services.

- Judicial Reform in the Next Century. Irving R. Kaufman. 29 Stan. L. Rev. 1-26 (Nov. 1976).
- Supreme Court of the United States: The Staff That Keeps It Operating. Richard L. Williams. 7 Smithsonian 39-49 (Jan. 1977).
- Justices Run 'Nine Little Law Firms' at Supreme Court. Richard L. Williams. 7 Smithsonian 84-93 (Feb. 1977).
- Narrowing the Discretion of Criminal Justice Officials. James Vorenberg. 1976 Duke L.J. 651-697.
- Plea Bargaining and the Transformation of the Criminal Process. 90 Harv. L. Rev. 564-595 (Jan. 1977).
- Symposium on Current Trends in Legal Education and the Legal Profession. 50 St. John's L. Rev. 434-573 (Spring 1976).
- Guidelines for Pre-recording Testimony on Videotape Prior to Trial. 2d ed. Federal Judicial Center, 1976.
- Procedural Aspects of Chapter X [Integrating the Chapter X Rules (Bankruptcy)]. Federal Judicial Center, 1976.

May 30-June 4 Seminar for Newly Appointed District Judges, Washington, D.C.

## PRESIDENT ESTABLISHES CIRCUIT JUDGE NOMINATING COMMISSION

President Carter issued an Executive Order on February 17 establishing the United States Circuit Nominating Commission.

"The Commission shall be composed of 13 panels, each of which shall, upon request of the President, recommend for nomination as circuit judge persons whose character, experience, ability and commitment to equal justice under law fully qualify them to serve the Federal Judiciary."

The Executive Order established panels for nine of the judicial circuits. Four additional panels were established, one for each of the following areas: CA-1 Eastern, CA-5 Western, CA-9 Northern and CA-10 Southern.

Each panel shall include members of both sexes, minorities, and equal numbers of lawyers and non-lawyers.

Each panel will consist of five members including the Chairman and all will be appointed by the President.

The full text of the Executive Order (No. 11972) was published in the Federal Register on February 17, beginning on page 9659.

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## Bulletin of the Federal Courts

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MARCH 1977

### PROFESSOR A. LEO LEVIN NAMED NEXT F.J.C. DIRECTOR

The Board of the Federal Judicial Center has elected Professor A. Leo Levin of the University of Pennsylvania Law School as the fourth Director of the Center.

Professor Levin will be replacing Judge Walter E. Hoffman, who will return to the United States District Court for the Eastern District of Virginia as an active Senior Judge. By statute the Director of the Center cannot serve beyond the age of 70.

Professor Levin received his B.A. degree in 1939 from Yeshiva College in New York and his J.D. from the University of Pennsylvania in 1942. He served in the United States Army from 1942 to 1946.

Professor Levin will be coming to the Center with a distinguished record based on years of experience in the legal profession and through service in a number of demanding posts outside the academic community. He has also written and lectured extensively on judicial administration and evidence and has been a Director of the National Institute for Trial Advocacy.

In addition to his teaching responsibilities at the University of Pennsylvania Law School, Professor Levin has taught at several other law schools throughout the country. He held the post of National President, Order of the Coif, and served as Fellow at the Center for Advanced Study of Behavioral Sciences at Stanford.

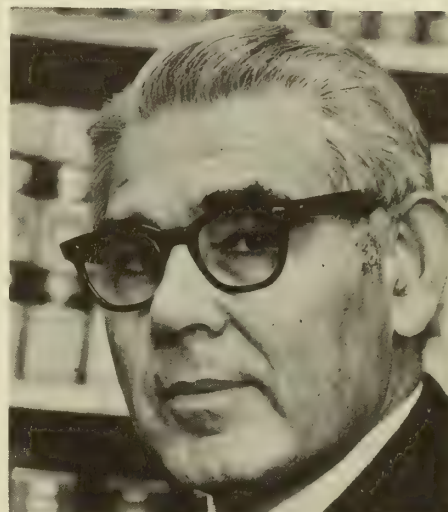
For two years, 1971-1973, Professor Levin served as

Chairman of the Pennsylvania Legislative Reapportionment Commission.

The incoming Director is no stranger to the federal judiciary since he has taken on a number of tasks which have required close contact with the federal judges and the Congressional judiciary committees. He is currently a member of the Judicial Conference's Standing Committee on Practice and Procedure, and he was Executive Director of the "Hruska" Commission on Revision of the Federal Court Appellate System, a two-year project which called for hearings, studies and legislative recommendations.

Last April Professor Levin served as Conference Coordinator for the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, the so-called "Pound Revisited" Conference, which was jointly sponsored by the Judicial Conference of the United States, the American Bar Association

(See LEVIN, page 2)



A. Leo Levin

### JUDICIAL CONFERENCE HOLDS SPRING MEETING

The Judicial Conference of the United States held its spring meeting this month and agreed to ask Congress to enact legislation which would eliminate civil diversity jurisdiction filings in the federal courts (except in Territorial Courts) in those cases where the United States Constitution and federal law are not involved.

If Congress did enact such legislation, it would abrogate a law which, since 1789 permits citizens of different states to file in the federal courts, if the amount in controversy exceeds \$10,000. It is estimated this

(See CONFERENCE, page 2)



(LEVIN from page 1)

and the Conference of Chief Justices. He later served as a consultant to the Task Force which drew up recommendations based on the Conference discussions and papers.

The Chief Justice, in announcing the appointment as Chairman of the Center's Board, expressed his personal enthusiasm and endorsement for the selection. "We are extremely fortunate," he said, "to acquire the talents of Professor Levin, a distinguished law professor, legal scholar and recognized leader in bar circles who has long worked with judges and lawyers on the practical aspects of the law. Since he is already well acquainted with the important work at the Center, as well as its staff, it will be an easy transition, and he will, I am confident, carry on in the high traditions set by his three predecessors in this office."

At the same time, Judge Hoffman, the incumbent Director, applauded the appointment and commented:

"The Board announcement that Professor A. Leo Levin will succeed me as Director of the Federal Judicial Center should give the federal judicial family complete assurance that the affairs of the Center will be competently administered in the years ahead. The legislative history of the Federal Judicial Center Act pointedly suggests that, while the services of a federal judge might be advisable during the first few years of operation, the services of a non-judge were anticipated in the permanent organization of the Center. Professor Levin will do well in the post and will, I am sure, have the support of the federal judiciary he will serve. I shall personally do whatever I can to assist him and the Center staff consistent with my other commitments."

The Chief Justice had high praise for Judge Hoffman, saying

"Walter Hoffman has given superb leadership to the Center as a worthy successor to Mr. Justice Clark and Judge Murrah. Under Judge Hoffman's guidance the programs of the Center have continued a steady expansion with great emphasis on utilizing modern technology to help our work. I look forward to his continued wise counsel on Center affairs."



(CONFERENCE from page 1)

would reduce the caseload in the federal courts by 32,000 cases annually or 19 percent.

The Chief Justice, as Chairman, issued a statement at the conclusion of the conference emphasizing the diversity jurisdiction recommendation, and noted that this concept has had the endorsement of legal scholars for many years.

The American Law Institute as far back as 1969 recommended in an eleven volume report—based on almost a decade of study—that diversity jurisdiction cases be substantially curtailed. As recently as last January the Department of Justice issued a Report on the Revision of the Federal Judicial System which noted that the burden which diversity jurisdiction imposes on the federal courts can no longer be justified.

The Conference also:

- Recommended that Congress amend the Bail Reform Act so that judicial officers would be authorized to consider, in addition to existing considerations, the "safety of any other person or the community."

- Reaffirmed unanimously a prior position that voir dire examination of prospective jurors be left to the district judges rather than the attorneys for litigants, noting that voir dire in the state courts, conducted by

attorneys, often takes an undue amount of time.

- Voted to extend the financial reporting and disclosure requirements (heretofore in effect since 1969 for federal judges, Referees in Bankruptcy and U.S. Magistrates) to include supporting personnel in the Federal Judiciary, such as clerks of court, chief probation officers, circuit executives and officers of the Administrative Office and the Federal Judicial Center.



## BILL ESTABLISHING BANKRUPTCY COURT INTRODUCED

Following 35 days of hearings in 1975 and 1976, Congressman Don Edwards (Dem. Calif.) has introduced major legislation which, if enacted, would eliminate the positions of Referees in Bankruptcy in the federal system and create an entire system of Article III courts for the sole purpose of handling bankruptcy cases.

The Chief Justice, responding to a request of the Judicial Conference of the United States, has appointed a special committee to study the proposed legislation and report back promptly to the Conference.



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## JUDGES SPEND THREE WEEKS IN ECONOMICS "CRASH COURSE"

A group of 19 federal judges spent three weeks studying modern economic theory at the Law and Economics Center of the University of Miami School of Law recently in order to learn the most modern economic concepts from such nationally renowned economists as Professors Paul Samuelson and Milton Friedman, both Nobel laureates. The judges studied from 9 a.m. until late evening six days a week for the three-week period. University officials said this was the first such institute for federal judges.

Chief Judge John W. Reynolds (E.D. Wis.) reported, "It was a very enriching experience. We were here not to become economists, but to understand the language of economics. Courts are only as good as judges and the lawyers who appear before them. By and large, our training in economics is not really satisfactory, and yet we are being increasingly called upon to decide economic issues."

## U.S. PAROLE COMMISSION PROPOSES MAJOR REGULATION CHANGES

The U.S. Parole Commission has proposed the adoption of new regulations governing parole, release, supervision and recommitment of prisoners, youth offenders and juvenile delinquents.

(Note: The full text of the proposed changes is published in the March 10, 1977 Federal Register beginning at page 13305.)

In general, the Commission has asked for comments on two major changes in its rules: First, the proposal that some offenders be allowed parole before they have completed more than one-third of their sentences and, secondly, a major revision of the Commission's classification of offenses by their severity. The offenses are "property offenses,"

The program focused primarily on economic theory and the Professors attempted to relate the theories to cases which until recently were atypical in federal courts.

The goal has been to give them the most recent thinking in economic theory and enable them to better understand the testimony of expert witnesses and lawyers.

Chief Judge David N. Edelstein (S.D. N.Y.) who is currently trying the IBM antitrust case, told the attorneys trying the case that he intended to attend the Institute. "All the lawyers were very cordial and replied that they saw no grounds for any conflict of interest in my coming here," he said.

The Institute plans a second three-week economics course for federal judges in November and, to date, over 70 judges have indicated a strong interest in attending, a spokesman for the Institute said.

The costs of both the course and per diem for the participating judges are paid by the University of Miami.

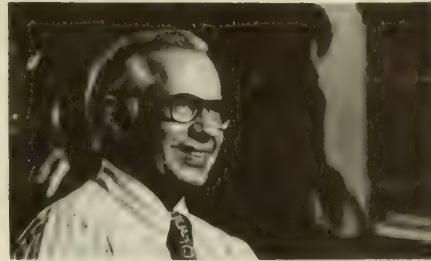


large scale hard drug offenses, large scale marijuana offenses, "bribery", non-violent escape, and "burglary". Also, the establishment of a method for rating conspiracy offenses according to whether the conspiracy actually involves the commission of the substantive offense or not is under consideration.

Members of the Federal Judiciary who are interested in commenting on the Commission's proposals should read the full text of the changes and then contact the U.S. Parole Commission. The Parole Commission is located in the Federal Home Loan Bank Building, 320 First Street, N.W., Washington, D.C. 20537. Comments should be marked: Attention: Rule Making Committee. [All comments and suggestions must be received by May 16, 1977.]

## SPOTLIGHT INTERVIEW

SPOTLIGHT: INTERVIEW WITH ROBERT B. MCKAY OF THE ASPEN INSTITUTE



Robert B. McKay

Robert B. McKay is the Director of the Justice, Society and the Individual Program of the Aspen Institute for Humanistic Studies. He is the former Dean of the New York University School of Law and former Chairman of the New York State Special Commission on Attica. He is Chairman of the ABA Commission on Correctional Facilities and Services, and President of the Legal Aid Society of New York.

The first task of Mr. McKay after the Justice program was formally established in June, 1975 was to construct a statement of goals. This was facilitated by a meeting at Aspen, Colorado, in July, 1975 of federal Justices and Judges led by The Chief Justice.

Would you tell us something about the Aspen Institute and what it accomplishes through studies and conferences?

The Aspen Institute for Humanistic Studies was established in 1949 in Aspen, Colorado. For about 20 years the main thrust of the activities was in Aspen, mostly in the summer, although some activities extended into other parts of the year. The so-called executive seminars were the original centerpiece of the Institute. Designed for men and women in business, with some resource people such as academics and government



officials, the seminars brought participants together for two weeks to discuss the great ideas of Western and, more recently, Eastern Man. There was a discussion leader for each seminar of about 20 individuals. The seminars remain an important part of the program even now. But since Joe Slater became President of the Institute in 1969, a number of substantive programs have been added. There are seven: Communications; Science; Environment; International Affairs; Education; Pluralism; and Justice.

The Justice Program, the most recent, was established in June of 1975. In July of the same year we brought to Aspen a group of federal judges, including The Chief Justice, several Chief Judges and others to help in planning the Program and in setting parameters within which it might operate.

#### **Both state and federal judges?**

On that occasion they were all federal judges except for a few academics.

#### **What was the purpose behind establishing the program for justice?**

The momentum came from a series of meetings, beginning in 1973, held in New York and in Aspen, although I was not involved until later. Judges and other leaders, including lawyers, said that the Aspen Institute would be incomplete without a justice component. The idea is that justice has an intersection with the humanities. The Justice Program is not only about law, although law is an important part; and it permeates all other programs to some extent. One of the strengths of the program, in my judgment, is that there is a very strong interaction among all the programs. For instance, I recently spent some time with Harlan Cleveland, who directs the International Affairs Program, in planning what we call a consultative workshop on human

rights, which happens to be a very timely subject right now. Following a planning session in New York, he and I will probably jointly conduct a seminar on the subject at Aspen in the summer of 1977.

Another example: I am in touch quite regularly with Frank Keppel, former Commissioner of Education, now the Director of the Education Program. He and I are interested in the school discipline cases decided by the Supreme Court in 1975. Our thesis is that the courts would be glad to get out of the business of deciding the due process rights of individuals in matters of school discipline. It would accordingly be useful to devise a model substantive code of discipline and of procedures for adaptation to the needs of individual schools. Then the courts could back away from something they never wanted to get into.

I have also worked with Frank Keppel in developing some strategies and procedures on school desegregation. He is interested in school finance, and I am too. We have now been approached by a major foundation to discuss the possibility of setting up a program to seek better interaction between educators and judges.

#### **If you could encapsulate it, what would be the objective of this program for a federal judge or for a senior supporting officer in the federal judiciary or the state judiciary?**

Let me back into the question by telling you what I think the Aspen Institute can do and the things it cannot do. In the first place, it is not an educational institution. We're not trying to train people. In the second place, we do not do empirical research of any substantial character. What I think we *are* good at is identifying problems within our several substantive areas and the humanities. Typically, we bring

together a group of experts, working from one or more background papers, to make recommendations for action. The result might be publication of an article, a book, or an "op-ed" piece. It might be a statement for public release or it might be something that would be given to appropriate federal or state officials who control the levers of power. Thus we try to bring together people who are knowledgeable, not to teach them something, but in the belief that they will sharpen the issues in the process of talking things out.

#### **Is the Santa Barbara center a workable analogy?**

To some extent, and the Aspen Institute has sometime been called a "think tank"; but I prefer to avoid that rather self-complacent label. The Center for the Study of Democratic Institutions has been a little more self-contained, relying somewhat less on outside talent, whereas the Aspen Institute has only a small permanent staff. Relying more upon outside experts, we serve as a kind of secretariat to bring people together to develop new ideas.

At the present time about two-thirds of the Institute's activities are not in Aspen. We do convene in Aspen in the summer for two months or so. But the rest of the year the program officers operate out of the individual program offices at various locations. The Justice Program office is in New York but physically separate from the main office. The only other program office in New York is Pluralism, directed by Waldemar Nielsen. Frank Keppel has moved the Education Program to Cambridge, located with the Harvard School of Education. Harlan Cleveland is housed with the Educational Testing Service in Princeton. The Science Program directed by Walter O. Roberts, is on the University



Colorado campus in Boulder. Communications (Roland Homet) is in Washington, as is the Environmental Program. There's also an Aspen Institute in Berlin, beautifully located in the Grunewald; and that is available to all of us. It began in 1973 or 1974.

**Is it for Americans or Europeans?**

Both. Obviously, it's a kind of European outpost, so a lot of programs that have some special relationship to Europe, even though there may also be an American component, are conducted there. The one program I have had there was on Comparative Criminal Sanctions, which had been suggested by Chief Justice Burger. We brought together a dozen Americans and fourteen West Europeans from seven different countries. Working papers were drawn from the United Nations and individual papers that summarized the sanctions system for six or seven of the countries. We talked it out for a week.

**Could you give us your impressions of what came out of the Conference on Comparative Criminal Sanctions?**

What we were trying to do was to identify common problems, and we came up with seven issues believed worthy of future study. The summary report was circulated to the participants, and I am now ready to pick up some of those for further development, perhaps in conjunction with other American foundations or individual scholars, or perhaps in cooperation with West Europeans.

**Were there any surprises in connection with Corrections, that came out of the Conference?**

Yes, I think the thing that was most interesting to me was the more flexible range of sanctions in many of the European countries.

**For example?**

We all know that their penalties are less in terms of time and their prisons are differently structured. One significant difference is in the more creative use of fines. For example, a day fine is a monetary fine which is scaled in relation to the income of the individual. Instead of being five hundred dollars, for example, which is nothing for one person but heavy for someone else, it is imposed roughly in proportion to each individual's income. For instance, if a person earns \$100 a day, that would be his fine multiplied by the number of days. So if somebody earns \$500 a day or \$50 a day, it's in proportion. It's so sensible. We have much to learn.

**Are many European countries making progress in their programs to provide restitution to victims of crimes?**

That's another thing. I think they are more imaginative on restitution than we have been. Various forms of restitution have been devised.

**What is your overview of the American correctional system today?**

The criminal justice system in the United States is in desperate trouble. Consider the statistics. The prison population is increasing very fast, as you know. At the beginning of 1976 it was 500,000, divided about equally between those sentenced and those awaiting trial. That gives the United States the highest rate of incarceration per 100,000 population. Moreover, the rate is increasing rapidly. In New York State, for example, the confined population is now something over 18,000. It went up almost 50 percent in a matter of a year and a half. And no real end is in sight. Yet we still have not decided the purpose of imprisonment. Deterrence and rehabilitation have not been notably successful. Incapacitation

operates only during the time of confinement. Is punishment the only viable purpose? If so, we must find ways of making the sentence more nearly proportionate to the offense.

**A bill has been introduced again in this Session to set up a sentencing commission with the idea of eliminating some sentencing disparity. Do you think this is the right approach?**

I think so. I've seen at least one version of the Hart-Kennedy Bill, and it seems to me very sensible. It leads cautiously into the notion of determinate sentencing by a thoughtful way of fixing the standards for determining what the sentences should presumptively be, and then at some later point actually determining the sentences. That is the kind of thing I would like New York State to be doing now.

**You mean the sentencing commission idea then?**

That's one sensible approach to it. The important thing is that there is opportunity for debate and thoughtful criticism.

**Some judges feel they have a responsibility to oversee jail and prison conditions where defendants are held while they are awaiting trial and oftentimes after they are sentenced. But some judges feel the judiciary should stay out of the picture and leave this work to the Corrections people.**

I agree that there's a responsibility, but I think I would approach it the way it's commonly done by statute and require that all judges who are doing the sentencing visit, at least once a year, all the institutions to which they have power to sentence. There's such a statute in New York but it's honored largely in the breach.

**In the light of the goals of the Devitt Committee, and in light of your background in legal**



education, do you see the need for higher standards for admission to practice in the federal courts?

I have no objection to reasonable requirements for admission to practice in the federal courts. I am accordingly a heretic in the legal education world where you are supposed to object violently, which is the official position of the Association of American Law Schools, as you probably know. But it seems to me that it is not unreasonable to require that a lawyer who is going into the federal courts must have some competence, in civil and criminal procedure, professional responsibility, evidence and advocacy, however defined. It is not an extraordinary or outrageous requirement. And I really don't fancy it as a burden on the law schools; those subjects are taught in all the law schools. They are perfectly standard for all law students except maybe advocacy.

**Do you see a need for compulsory programs for recertification or compulsory programs for continuing legal education and will such programs force a trend towards specialization?**

I take the view of the recently published report of an ABA committee especially constituted to study specialization. The question is not whether we go to specialization, but *when* and *how*. This is Rod Petrey's report. That seems to me exactly right. We're partly there already, but haven't acknowledged it. Therefore, it seems to me it's very important that we think carefully about how to regulate specialization because it is coming, in one fashion or another. That suggests the answer to the question on competency. It seems to me there is an obligation to assure competency within the area of specialization. That suggests in turn, some need for continuing legal education.

**Do you think law schools are the vehicles to take us from where we are to where we should be on these questions?**

Whether it should be done by the bar, or by the law schools or by cooperation, is a question that requires more study. I personally would like to see the law schools play a heavier role in the future. Law schools have tended to stay away from continuing legal education as not quite respectable. I disagree. It is a very important function. The business of law schools is teaching and use of materials; and I think they should play a part in continuing legal education.



## LEGISLATIVE OUTLOOK

### ENACTMENTS

The Emergency Natural Gas Act of 1977, P.L. 95-2, was signed February 2, 1977. It provides authority for the President to order emergency delivery and transportation of natural gas to deal with existing or imminent shortages in the U.S. or any of its regions by providing assistance in meeting requirements for high priority uses and authorizes short-term emergency purchases of natural gas. The provision of most significance to the Judiciary is Section 10 of the Act which provides that the Temporary Emergency Court of Appeals will have exclusive original jurisdiction to review civil cases and controversies under the Act and exclusive jurisdiction of all appeals from the District Courts of the U.S. in cases and controversies arising under Section 4(e) which is the Section providing for issuances of subpoenas and requests for answers for interrog-

atories and requests for reports and other information.

### Congressional Action

Judiciary appropriations have been the subject of hearings before the Subcommittee on State, Justice, Commerce, and the Judiciary of the House Appropriations Committee.

**Attorneys' Fees.** The Senate Judiciary Committee, Subcommittee on Administrative Practice and Procedure has continued hearings on S. 270 which would provide for attorneys' fees in proceedings before federal agencies and court actions involving the review of those agency proceedings.

On February 21, 1977 the Senate Judiciary Committee began hearings on S. 11 and printed amendment number 40 with respect to additional district court judgeships. Amendment number 40 incorporates the most recent recommendations of the Judicial Conference of the U.S.

**Federal Rules of Criminal Procedure.** The House Subcommittee on Criminal Justice of the Judiciary Committee held hearings on proposed amendments to the Federal Rules of Criminal Procedure which were proposed last year by the Supreme Court and whose effective dates were postponed until August, 1977.

**Other Actions.** Hearings before the House Judiciary Committee Subcommittee on Monopolies and Commercial Law are scheduled on H.R. 1181, 1899, and 3685 to authorize additional federal judgeships.

The Subcommittee on Management and Organization of the Committee on Post Office and Civil Service has scheduled hearings on H.R. 382 to establish a Commission on Ethics and Financial Disclosure for Federal Employees.

### BILLS INTRODUCED

**Tax Reform—Sick Pay Exclusions.** Senator Dole has introduced S. 4 which would pro-



one the effective date of the amendments made by the Tax Reform Act to the provisions of the code relating to the exclusion of sick pay through taxable years beginning after December 31, 1976. In the House, a bill introduced by Congressman Daniel, H.R. 318, together with related bills will be the subject of hearings in March before the Committee on Ways and Means.

**Interpreters for the Hearing Impaired Act.** Senator Mathias has introduced S. 819, a bill which will require the appointment of interpreters for hearing-impaired individuals in certain judicial proceedings. The statement of Senator Mathias at the introduction of the bill indicated that the federal rules currently provide for translators of foreign languages but not sign language used by the deaf. The bill would impose uniform national standards for such appointments and authorizes the Administrative Office to prescribe, determine, and certify the qualifications of a person who may serve as certified interpreter in proceedings involving the hearing-impaired.

**Rules Enabling Act.** H.R. 3413 was introduced by Congresswoman Holtzman to amend the provisions of Titles 18 and 28 U.S.C. to provide a uniform method for the proposal and adoption of certain rules of court by the Judicial Conference of the United States. The bill is currently pending before the House Judiciary Committee.

**Grand Jury Reforms.** Congressman Conyers together with 13 other Congressmen has introduced H.R. 3736 to establish certain rules with respect to the appearance of witnesses before grand juries in order to protect the Constitutional rights and liberties of such witnesses under the Fourth, Fifth and Sixth Amendments to the Constitution, to provide for independent inquiries by grand juries and for other purposes. The bill is pending before the House Committee on the Judiciary.

**National Court of Appeals.** H.R. 3969 has been introduced by Rep. Wiggins to establish a National Court of Appeals and for other purposes.



#### **SICK PAY EXCLUSIONS— TAX REFORM ACT**

Some senior judges have in the past claimed the sick pay exclusion provided by former section 105(d) of the Internal Revenue Code which had provided that payments received by an employee pursuant to the provisions of a wage continuation plan for a period during which the employee is absent from work on account of sickness are excludable from gross income. Section 505 of the Tax Reform Act of 1976 (P.L. 94-455) would change the old sick pay exclusion and make it a disability exclusion applicable only to taxpayers less than 65 years of age who are retired because of total and permanent disability. The recent law was made effective by section 508 to taxable years *beginning after December 31, 1975*.

There are several bills which would change the effective date of the new provisions of the Tax Reform Act relating to sick pay. S. 4 was introduced by Senators Dole, Brooke, Eagleton, McClure, Nunn, Randolph, Ribicoff, Scott and Williams on January 10. The bill would postpone the effective date of the changes to taxable years beginning after December 31, 1976. The Senate Finance Committee has added this provision to the bill H.R. 3477, a bill to provide for refunds of 1976 individual income taxes and other payments, to reduce individual and business income taxes and to provide tax simplification and reform, which is currently undergoing markup in the Committee.

#### **First in Nation**

#### **UNIVERSITY OF MISSISSIPPI ESTABLISHES COURT REPORTERS INSTITUTE**

The University of Mississippi became the first university in the country to establish a four-year program for court reporters when the school opened its Court Reporter Institute recently.

The program is designed to provide students with a liberal interdisciplinary education in addition to teaching the skills of court reporting, according to Dr. Alton V. Finch, Chairman of the Department of Business Education and Office Administration. There are numerous schools which teach court reporting, but the University of Mississippi is the first to offer this training as a integral part of its four-year academic program.

Court reporting students must satisfy University degree requirements and also complete 40 hours of specialized course work. Graduates will be awarded a B.S. degree in Business.

Twenty-two students who comprise the first class are currently studying academic subjects as well as practicing shorthand and learning machine reporting techniques. Students are being taught computer compatible reporting. The program also includes a six-week internship with an experienced court reporter in Mississippi which is conducted under the supervision of the University of Mississippi Law School.

[Temple University in Philadelphia has a two-year program leading to a certificate in court reporting. This program offers courses in such subjects as English and Medical Terminology.]





## doomsday calendar

- Apr. 4-7 Advanced Seminar for U.S. Magistrates, Atlanta, GA  
 Apr. 7-8 In-Court Management Training Institute, Columbia, SC  
 Apr. 11-13 Seminar for Jury Clerks, Washington, DC  
 Apr. 15-16 Workshop for District Judges (Second Circuit), New York, NY  
 Apr. 18-19 Meeting of Metropolitan Chief Judges, Carmel, CA  
 Apr. 18-19 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Carmel, CA  
 Apr. 18-20 Seminar for Bankruptcy Judges, Washington, DC  
 Apr. 18-20 GSA Seminar for Clerks, Alexandria, VA  
 Apr. 18-22 Advanced Seminar for U.S. Probation Officers, New Orleans, LA  
 Apr. 21-23 Seminar for Bankruptcy Clerks, Washington, DC  
 Apr. 25-29 Orientation Seminar for U.S. Probation Officers, Washington, DC  
 Apr. 30-May 1 Seminar for Federal Court Reporters, Albuquerque, NM  
 May 2-4 Instructional Technology Workshop for U.S. Probation Officers, Birmingham, Ala.  
 May 9-11 Seventh Circuit Conference, Chicago, IL  
 May 10 Workshop for District Judges (Sixth Circuit), Louisville, KY

### THE THIRD BRANCH

VOL. 9, NO. 3 MARCH 1977

### THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
 1520 H STREET, N.W.  
 WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

- May 11-14 Sixth Circuit Conference, Louisville, KY  
 May 10-12 Advanced Management Workshop for Supervising U.S. Probation Officers, Pittsburgh, PA  
 May 16-20 Workshop for U.S. Probation Officers, Portland, OR  
 May 17 Judicial Conference of the Court of Customs and Patent Appeals, Washington, DC  
 May 19-21 Meeting of Executive Committee, National Conference of Federal Trial Judges, Brownsville, TX  
 May 22-24 District of Columbia Circuit Conference, Hershey, PA  
 May 23-25 Seminar for District Court Clerks, Denver, CO  
 May 23-27 Advanced Management Seminar for Chief U.S. Probation Officers, Washington, DC  
 May 23-24 Judicial Conference Advisory Committee on Civil Rules, Washington, DC  
 May 25 First Circuit Conference, Washington, DC  
 May 26-27 Workshop for District Judges, Washington, DC



## PERSONNEL

### ELEVATION

William B. Bryant, Chief Judge, District, D.C.; Vice William B. Jones, March 20.

## Bulletin

The Judicial Conference approved the following Recommendation this month regarding the reporting of outside income by members of the Federal Judiciary other than judges:

It is recommended that Executives of the Administrative Office of the U.S. Courts, Executives of the Federal Judicial Center, including Committee Chairmen and Division Chiefs of both groups, all Circuit Executives, Clerks of Court, Clerks in charge of Divisional Offices, Chief Probation Officers and Supervising Probation Officers and other employees in grade above grade JSP-15 be required to file a semi-annual report of non-governmental income.

Those affected will receive reporting forms and instructions by June 1, 1977 for reporting income received during the six-month period ending June 30. A copy will be filed with the Review Committee of the Judicial Conference.

Edward D. Re, Chief Judge U.S. Customs Court, N.Y.C., Vice A. Boe, March 21.

### DEATHS

Harry E. Kalodner, U.S. Senior Circuit Judge, CA-3, March 15.

Mary D. Alger, Judge, U.S. Customs Court, Tucson, AZ, March 5.

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# The Third Branch

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## Bulletin of the Federal Courts

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APRIL 1977

## SENATE JUDICIARY COMMITTEE APPROVES 146 NEW JUDGESHIPS

The Senate Judiciary Committee April 21 approved a total of 146 new judgeships—35 for the circuit courts and 111 for the districts.

In general, the Committee approved the request of the Judicial Conference for 107 new district judgeships but added four: one for the District of Utah, another for the Western District of North Carolina and two temporary positions in the Eastern District of Kentucky (1) and the Southern District of West Virginia (1). These two temporary positions were recommended because of the backlog of black lung cases in those districts.

The judgeship bill, S.11, if enacted also would split the Fifth Circuit creating a new Eleventh Circuit consisting of Texas and Louisiana. Six circuit judgeships would be created for this new circuit and six would be assigned from the Fifth Circuit. Five new circuit judgeships would be added to the Fifth Circuit.

The Committee approved an additional 10 circuit judgeships for the Ninth Circuit and asked the Judicial Council of the Ninth Circuit to recommend within one year after the appointment of the last judge, whether or not the circuit should be split.

A new circuit judgeship was also approved for the First, Third, Seventh, Eighth and Tenth Circuits; two for the Second, Sixth and District of Columbia Circuits and three for the Fourth Circuit.

Senate floor action on the measure is not expected until after the report on the bill is printed in early May.

[Note: The specific recommendations of the Judicial Conference for new district judgeships are printed on page one of the January 1977 *Third Branch*.]

### HEARINGS SET ON FEDERAL BAR ADMISSION STANDARDS

The Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts has announced that it will hold public hearings in four cities during the month of May.

Hearings will be held in Chicago on May 11, with Judge Hubert L. Will as moderator; in Washington, D.C. on May 20, with Judge Malcolm R. Wilkey as moderator; in Los Angeles on May 24, with moderator, Dean Dorothy W. Nelson of the U.S.C. Law School; and in Boston on May 27, with moderator, Robert W. Meserve, former President of the American Bar Association. The purpose of the



Among the participants at the April meeting of the Committee to Consider Standards for Admission to Practice in the Federal Courts are (L. to R.), front row: Judges J. Lawrence King (S.D. Fla.); Robert L. Taylor (E.D. Tenn.); James R. Miller, Jr. (D. Md.); second row: Judges Sherman G. Finesilver (D. Colo.); Morris E. Lasker (S.D. N.Y.); third row: Judge Malcolm R. Wilkey (CA-D.C.); fourth row: Judges Hubert L. Will (N.D. Ill.); Adrian A. Spears (W.D. Tex.); Edward J. Devitt (D. Minn.); fifth row: Judges W. Leon Higginbotham, Jr. (E.D. Pa.); J. Clifford Wallace (CA-9).

hearings is to obtain views on the quality of advocacy in the federal courts and on suggestions that have been made for improving that quality. Requests for opportunities to appear should be addressed to Carl H. Imlay, (See STANDARDS, page 2)



(STANDARDS from page 1)

General Counsel, Administrative Office, Washington, D.C. 20544.

The Committee previously solicited written comments in a notice dated February 4. That notice was distributed to all federal judges and to many organizations with potential interest in the subject.

The announcement of hearing dates followed a meeting of the committee in Carmel, California, on April 18 and 19. At that meeting, the committee heard presentations on the regulation of practice in the medical and accounting professions, on the continuing work of the Committee in the Second Circuit, on various types of courses in advocacy that are available, and on limited admission to practice for law students. The committee also discussed the program of research being conducted by the Federal Judicial Center to aid it in determining the extent and nature of possible deficiencies in advocacy in the federal courts.

In a joint session with the Conference of Metropolitan Chief Judges, which was also meeting in Carmel, Committee Chairman Edward J. Devitt, Chief Judge of the United States District Court for the District of Minnesota, explained the work of the Committee and asked for cooperation in its efforts. He emphasized that the Committee is approaching the task with open minds, and is committed to acting on the basis of the best information it can obtain about the present state of both trial and appellate advocacy. In addition to providing opportunities for judges and others to express their views on the subject of the Committee's work, the effort to obtain an adequate information base includes a substantial program of survey research. This program began on April 15, when the Federal Judicial Center mailed questionnaires to all active district and circuit judges. The questionnaires will be followed

by a program in which judges will be asked to rate the performances of lawyers who appear before them in a series of cases; Judge Devitt emphasized that there would be no requirement that the rated lawyers be identified, and that the information will be used only for purposes of statistical analysis.

Judge Devitt called for the fullest cooperation in these and related research efforts so that the Committee will have reliable information on which to base its recommendations.



### BILLS TO CREATE SENTENCING COMMISSION ARE REINTRODUCED

Legislation to create a U.S. Commission on Sentencing has been reintroduced in both the House and Senate.

The House bill, H.R. 1182, introduced by Congressman Rodino and an identical version, S. 181, introduced by Senator Kennedy, have strong support in both the House and Senate and would require district court judges prior to sentencing an offender to consider:

- The nature and circumstances of the offense and the history and characteristics of the defendant;
- The need for the sentence imposed;
- Whether less restrictive sanctions have been applied to the defendant frequently or recently;
- Whether the sentence falls within the guidelines of the U.S. Commission on Sentencing.

The Court must explain why the particular sentence is being imposed at the time of sentencing.

The bill allows the defendant to appeal to the Court of Appeals if the sentence is harsher than that specified by the U.S. Sentencing Commission; conversely, the Government may

### NEW DISTRICT JUDGE SEMINAR SET

A seminar for newly-appointed District Judges will be held at the Federal Judicial Center in Washington from September 26 to October 1.

It is anticipated that by September at least 20 to 30 new district judges will have been appointed either by filling existing vacancies or through new judgeships.

As in the past, the seminar is being structured by a committee of federal judges, this year Judge Alvin B. Rubin (E.D. La.), Judge Hubert L. Will (N.D. Ill.), Senior Judge William J. Campbell (N.D. Ill.) and Federal Judicial Center Director, Judge Walter E. Hoffman. "Faculty" members have been notified and are already working on presentations. It is expected a final program will be in the mail by June.

The seminar will start with a reception at the Dolley Madison House on Sunday, September 25, and members of the judges' families are included in this activity. There will also be the usual "black tie" dinner at the Supreme Court on Thursday, September 29. The seminar will conclude at mid-day Saturday, October 1.

appeal if the sentence is less than the guideline.

The bill also establishes the Sentencing Commission, a five member group appointed by the U.S. Judicial Conference, who will be paid at the same rate as district judges.

Among the key functions of the Commission is the development of guideline sentences and their promulgation to all sentencing judges in the Federal Judicial System. The Commission shall collect information on sentencing, conduct research into the subject and conduct sentencing workshops in various parts of the country.



## PAROLE COMMISSION RELEASES SALIENT FACTOR SCORING MANUAL

The United States Parole Commission has released a revised salient factor scoring manual and the new factors took effect on April 1.

The factors are used to determine if an inmate is eligible for parole.

The new factors are: no prior convictions, no prior incarceration, age at first commitment, current offense does not involve auto theft or checks, parole has never been revoked or new offense has not been committed on parole, no history of heroin or opiate dependence, and

verified employment for a total of at least six months during the last two years in the community.

The Parole Commission dropped two items from their previous salient factor list: "Living Arrangements" which it said has proven difficult to score reliably in operational usage and is subject to easy falsification by the prisoner, and "Education" which they said was the weakest of the predictive factors. The Commission substituted for these two items "prior convictions" and "age at first commitment."

The new salient factor score changes will apply only to prisoners receiving their initial hearings after April 1, this year.

## ADMINISTRATIVE OFFICE RELEASES REPORT ON FEDERAL COURT ACTIVITY

During the Spring meeting of the Judicial Conference of the United States, the Director of the Administrative Office, Rowland F. Kirks, presented a short report on the status of judicial business of the U.S. Courts of Appeals and District Courts for the six-month period ending December 31, 1976.

Here is a short summary of that report. [The full text is available from the Federal Judicial Center Information Service.]

The Courts of Appeals filings rose by more than 4% and while these courts were able to increase their terminations by 6%, they were unable to prevent the rise in their current backlog of 5,391 cases which were pending at the end of the calendar year. This backlog was 14% higher than the backlog of six months earlier.

The Administrative Office estimates by the end of June 1977 the Courts of Appeals will have received an additional 10,031 appeals for a total of 19,400 for the twelve-month period.

This represents a filing work-

load per authorized panel of approximately 600 appeals compared to a workload figure of only 361 filings per panel for fiscal year 1970.

Turning to the District Courts, however, filings fell 4.1 percent compared to the same period last year, while terminations increased by approximately 6%. However, the pending backlog at the end of the year was still at a record high of 148,369 civil cases representing an increase of 11% over the previous year.

Significantly, prisoner petitions from federal prison inmates dropped by 17% and those from state inmates dropped by 4%. Apparently the grievance procedure established by the Bureau of Prisons and the Parole Commission Act are working together to reduce these prisoner cases.

Criminal case filings continued to drop during the period by 3%, and case terminations were lower than last year by more than 10%. This resulted in a backlog of 20,483 criminal cases which was 5% below the previous year.

Bankruptcy cases continued to drop by more than 15% but the

(See A. O. REPORT, page 4)



SENATOR DENNIS DeCONCINI

## DeCONCINI IS NEW CHAIR- MAN OF KEY JUDICIARY SUBCOMMITTEE

Senator Dennis DeConcini (D.-Ariz.) has been selected to head the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, the Senate panel which in previous years has played a key role in legislation affecting the federal judiciary.

Senator DeConcini was appointed by the Judiciary Committee to head the Subcommittee after Senator Quentin Burdick (D.-N.D.) resigned to accept a position on the Senate Appropriations Committee.

He is a newly-elected member of the Senate, has been in private practice, and served as Special Counsel to Arizona Governor Sam Goddard.

He was elected to a four-year term as Pima County Attorney. This county, which includes the city of Tucson, is the second largest in the state of Arizona. During his tenure as Pima County Attorney, Senator DeConcini's programs to assist consumers, first-time offenders, to protect the environment and to wipe out the flow of hard drugs, brought national recognition to his office.

The National District Attorneys Association named his the model office of its size in the country for the implementation of standards and goals.





## (A. O. REPORT from page 3)

pending caseload is still very large. The Administrative Office expects a decrease of nearly 10% in the filings for the current year despite the economic hardships caused by the winter energy crisis.

Magistrates experienced a 41% increase in additional duties in civil proceedings and this was accompanied by a 10% increase in trial jurisdiction cases and in additional duties connected with criminal cases. Altogether magistrates handled 6% more matters than during the same period a year ago.

The Federal Probation Service has experienced a drop in persons received for supervision resulting primarily in the drop in criminal prosecutions. The 64,432 prisoners under supervision represented an average caseload of 39 persons per officer for the 1,669 probation officers.

Juror utilization continued to improve with the percentage of jurors selected or serving up from 59.6% compared to 60.4% during the comparable period last year.



## PERSONNEL

### CONFIRMATIONS

William M. Hoeveler, U.S. District Judge, S.D.Fla., April 25.  
Howell W. Melton, U.S. District Judge, M.D.Fla., April 25.

### RESIGNATION

Wade H. McCree, Jr., U.S. Circuit Judge, 6th Circuit, March 28—to become Solicitor General of the United States.

### DEATH

Kenneth Philip Grubb, U.S. Senior District Judge, E.D.Wis., March 11.

## SENTENCE REVIEW, DIVERSITY JURISDICTION BILLS SUBMITTED

Acting on behalf of the Judicial Conference, the Administrative Office has submitted bills calling for the appellate review of sentences and the modification of district court diversity jurisdiction.

A.O. Director Rowland F. Kirks, in his transmittal letter accompanying the draft bill which would amend the Federal Rules of Criminal Procedure to provide for appellate review of sentences, said the Judicial Conference has considered and circulated the proposal among the bench and bar of the nation and has held public hearings on appellate review of sentences.

"As a result, the Conference has concluded that there should be an opportunity for review of criminal sentences of a year or longer in the Courts of Appeals and that there should be a right to seek leave of appeal by both the defendant and the Government."

The bill would amend Rule 35 of the Federal Rules of Criminal Procedure to allow the appeal of a sentence other than a death sentence within ten days after a judgment is entered.

The Government may petition for leave to appeal if the sentence imposed is less than a maximum permissible term of imprisonment.

In general, neither the defendants nor the Government can appeal the sentence if it was part of a plea agreement accepted by the judge.

In a related action, Director Kirks submitted legislation which would amend Section 1332 (a)(1) of Title 28 of the U.S. Code.

In his letter of transmittal, Director Kirks said that the draft bill would modify the jurisdiction of the district courts by prohibiting the filing of a civil action by a plaintiff in a diversity suit in the district court in

the state of which he is a citizen

He noted that this proposed legislation was first approved by the Judicial Conference at its session in March 1976. At its recent session on March 10, 1977, the Conference reaffirmed its approval of the draft bill but at the same time indicated its preference for "legislation to bring about a complete elimination of diversity of citizenship as a basis of jurisdiction for the district courts except in territorial district courts." The Conference has also endorsed legislation to increase the amount in controversy requirement for diversity cases from \$10,000 to \$25,000 and to eliminate the amount in controversy requirement in federal question cases.

Preliminary estimates indicate that the enactment of this legislation will reduce the number of diversity cases filed annually in district courts by approximately 45% and would not impose a significant burden on any state court because the cases transferred would be spread over a number of state courts.



## ICM COMPLETES SEVENTH YEAR

In a graduation ceremony held March 19 at the Federal Judicial Center, 36 new Fellows of the Institute for Court Management were awarded certificates by Judge Edward A. Tamm (CA D.C.), a member of the ICM Board of Trustees.

The ceremony marked the seventh year of the ICM Court Executive Development Program which was commenced in 1970 to train professional court managers. Chief Justice Warren E. Burger called for such a program in a 1969 address to the American Bar Association which

(See ICM, page 5)



ICM from page 4)

read in part:

"The courts of this country need management which busy and overworked judges, with vastly increasing caseloads, cannot give. We need a corps of trained court administrators... to manage and direct the machinery so that judges can concentrate on their primary professional duty of judging."

Since the inception of the Institute, 272 individuals have completed the Court Executive Development Program, and 22 are currently with the federal courts.

The ICM Program which is divided into two phases, was recently revised by replacing the Phase I five-week residential seminar in Colorado with five six-day workshops scheduled throughout the year in various geographic locations. The Phase I agenda for 1977 began in Philadelphia on February 6 with a program entitled "Records, Systems and Procedures." March 7 was the beginning of a Denver workshop on "Information Processing Systems". Keystone, Colorado will be the location for the workshop beginning June 5 on "Caseflow Management and Error Utilization". October 2 will be the start of the workshop on "Personnel Administration" in San Diego. "Budget, Planning and Financial Controls," scheduled to begin on December 4 in Denver, will complete the Phase I program for 1977. Although completion of all five Phase I workshops is a prerequisite for consideration for selection as a Phase II student, each workshop is completely independent of the other four and may be taken by persons not planning to apply for the total Court Executive Development Program.

Phase II sessions begin on August 1, 1977 with a four-week residential seminar in Colorado,

covering "The Application of Modern Management Concepts in the Courts". Thereafter, each participant undertakes an internship of approximately 65 days to engage in an intensive study of specific administrative problems. A written report on the study is required before the final residential seminar which lasts eight days.

In addition to the Court Executive Development Program, ICM conducts an Advanced and Continuing Education Program for ICM graduates and other experienced professionals. For example, a conference on "Appellate Court Administration" is scheduled for October 23-28 and a seminar entitled "Developing and Evaluating Court Information Systems," a workshop focusing on new issues for data processing and court personnel, is slated for November 13-16, 1977.

ICM also publishes *The Justice System Journal*, a management journal designed to bring theory and empirical research to practitioners in the profession. Personnel from the Institute are involved in other activities as well, such as research and development, studies of court procedures and structures, and consultant services to courts and related agencies.

Persons interested in the Institute for Court Management may contact Harvey E. Solomon, Executive Director, 1405 Curtis St., Denver, Colorado 80202.

Federal court employees may apply to the Federal Judicial Center for scholarship funds both for tuition and for travel and per diem. Applications should be received well in advance of the workshop or seminar, and not later than 60 days before the start of the Court Executive Development Program. Because funds are limited, priority will be

given to supervisory personnel such as clerks, chief deputies and middle managers. All requests for funds must be considered by the FJC Board of Directors.

Most of the ICM classes have included persons now with the federal courts.

The 1971 graduation produced the largest number of ICM Fellows who are associated with the federal judiciary, namely, William A. (Pat) Doyle, Circuit Executive for the Third Circuit; William B. Luck, Circuit Executive for the Ninth Circuit; James A. Higgins, Circuit Executive for the Sixth Circuit; R. Hanson Lawton, Circuit Executive for the Eighth Circuit; Raymond F. Burghardt, Clerk of Court for the Southern District of New York; Edward M. Kritzman, Clerk of Court for the Central District of California; Robert F. Connor, Clerk of Court for the Western District of Missouri; Jack L. Wagner, Clerk of Court for the Western District of Pennsylvania; Robert C. Tucker, Clerk of the Eighth Circuit Court of Appeals; Charles Vagner, Chief Deputy Clerk for the Northern District of Illinois; and James B. Ueberhorst, Chief of the Management Review Division of the Administrative Office.

In 1975, Collins Fitzpatrick, Circuit Executive for the Seventh Circuit, became an ICM Fellow, and in 1976 three others completed the Program: Thomas Strubbe, Clerk of the Court of Appeals for the Seventh Circuit; Robert L. Bingham, Management Analyst for the Second Circuit Court of Appeals; and Michael Kunz, Chief Deputy Clerk of Court in the Eastern District of Pennsylvania.

(See ICM, page 6)



(ICM from page 5)

The two federal employees graduated in March of 1977 were John P. Hehman, Clerk of the Sixth Circuit Court of Appeals, and Robert L. Hoecker, Chief Deputy of the Tenth Circuit Court of Appeals.



### ASSISTANT ATTORNEY GENERAL MEADOR OUTLINES GOALS OF NEW OFFICE

In an address presented to a national symposium on Progress in Criminal Justice, Assistant Attorney General Daniel J. Meador who was recently selected to head the new Office for Improvements in the Administration of Justice in the Justice Department, outlined the mission of the new unit.

Here are selected excerpts from his address. [The full text of the address is available from the Federal Judicial Center Information Service.]

"The Executive Branch of the government has never had a permanent, systematic means of dealing continually with court problems, especially as they affect the public and in furnishing continual support for the courts with Congress and the public.

"We are charged with developing proposals dealing with the structure and organization of the entire federal judicial system, and with its processes in both civil and criminal cases. Moreover, we will seek to develop alternatives to the courts, to devise a variety of means of improving the quality of justice in American life. While we will continue to give major attention to improving the criminal justice system, we will, in addition, give substantial attention to problems with civil cases and with court

organization generally.

"First, we will work hard to develop alternatives to the courts, that is, means of handling certain kinds of problems that are more convenient, less expensive, and more effective than a judicial remedy would be. This Office is at work now to develop a model of a Neighborhood Justice Center.

"There is a growing feeling that the structural design of our courts, which comes out of another era, may not be suitable for the volume and type of litigation we are getting today. The time may be right for some basic rearrangements within the Judicial Branch."

Here are some of the problems that he cited:

- Pre-trial procedures in civil cases.
- Class actions.
- Providing effective and efficient representation of the Federal Government in court is of special concern to the Department of Justice. The ways in which U.S. Attorneys function and are coordinated might be improved. The Federal Government's litigation in the U.S. Courts of Appeals is not well managed. We need to devise better techniques for that, something like the kind of management the Solicitor General provides at the Supreme Court level.
- We have already developed a bill, which will probably be transmitted to Congress soon, dealing with jurors and witnesses. A new schedule of fees is being proposed.

• Reemployment rights for jurors and means of enforcing those rights.

• Compensation for victims of crimes.

Of major significance to the Federal Judiciary were Assistant Attorney General Meador's plans for enlarging the power of federal magistrates in both criminal and civil matters. He mentioned

that the Justice Department is currently drafting a bill enlarging the powers of magistrates.

"In substance the proposed bill enlarges the criminal jurisdiction of U.S. magistrates by authorizing them to try all federal misdemeanors, that is, offenses carrying up to one year imprisonment, but without limit on the amount of fine which may be imposed. Under the bill, magistrates would have authority to try all petty offenses, and the defendants would no longer have an option to elect [to have a trial before a U.S. District Judge.]"

"Our bill would vest the magistrates with a substantial amount of case dispositive civil jurisdiction. Tentatively included within these would be Social Security cases and certain actions for penalties and forfeitures. If this bill is enacted the magistrates would acquire something on the order of 5 to 10% of present U.S. District Court jurisdiction.

"This new Office has another significant responsibility, and that is in connection with research. It is anticipated that this year for the first time, Congress will appropriate a new Federal Justice Research Fund, in the amount of two million dollars annually, to be administered by this Office."

## LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

**Black Lung Benefits.** The House Committee on Education and Labor has reported H.R. 4544, amending the Coal Mine Health and Safety Act with respect to the black lung benefits program. The bill as reported is identical in most respects to H.R. 10760, which passed the

(See OUTLOOK, page 7)



(OUTLOOK from page 6)  
House last year on March 2.

**Pay Increase Legislation.** The President has signed into law P.L. 95-19, dealing with extension of unemployment benefits which carries with it a rider which was added by the Senate, which deals with the method of determining pay increases for federal judges, members of Congress and other high level federal officials. The rider, as enacted, has three highly significant features. First of all, a recorded vote must be taken in each House of Congress before the pay increases recommended by the President can be implemented. Second, such recorded votes must be taken within 60 days within the date of the recommendations of the President. Third, a separate recorded vote will be taken with respect to each separate category of officials; there will be a separate recorded vote on any recommendation made in the future by the Quadrennial Pay Commission with respect to federal judges.

**Sick Pay Exclusion.** Congress recessed for Easter without taking final action on legislation which would enable individuals having sick pay to exclude such pay from their income received during 1976. The bill was originally passed by the House, along with other amendments to the tax law (Tax Reform and Simplification Act of 1977). The Senate accepted the sick pay bill, but added amendments relating to other matters. Congress then adjourned for the Easter recess. Chairman Ullman of the House Ways and Means Committee and Senator Ribicoff indicated that the matter would be taken up after the recess.

As the law now stands, taxpayers could file their return on time, and file an amendment later if the law is changed to permit the exclusion of sick pay for 1976, or the taxpayer could file for an extension to June 15.

The number of the bill is H.R. 1828, and persons who have requested the extension of time to file their income tax return should check carefully to ascertain whether it has been passed prior to completing their final return. [The House bill status number is (202) 225-1772.]

**Reform of Federal Criminal Laws.** The House Judiciary Subcommittee on Criminal Justice held two informal briefing sessions during March on the proposal to reform and recodify the federal criminal code.

#### Judicial Conference Proposals

1. To amend the Jury Selection and Service Act of 1968, as amended, by revising the section on fees of jurors and by providing for a civil penalty and injunctive relief in the event of a discharge or threatened discharge of an employee by reason of such employee's federal jury service.

2. To provide for the defense of judges and judicial officers sued in their official capacities.

3. To amend Title 28, United States Code, to provide in civil cases for juries of six persons, to amend the Jury Selection and Service Act of 1968, as amended, with respect to the selection and qualification of jurors, and to extend the coverage of the Federal Employees Compensation Act to all jurors in U.S. District Courts.

4. To amend Section 1332(a)(1) of Title 28, United States Code, relating to the jurisdiction of the United States District Courts in suits between citizens of different states.

5. To amend the Jury Selection and Service Act of 1968, as amended, to make the excuse of prospective jurors from federal jury service on the grounds of distance from the place of holding court, contingent upon a showing of hardship.

**Bankruptcy Legislation.** The House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, is still continuing mark-up of H.R. 6, revision of the bankruptcy laws.

**Clean Air Act Amendments.** The House Committee on Interstate and Foreign Commerce, Subcommittee on Health and the Environment, is continuing its mark-up of the amendments to the Clean Air Act, particularly H.R. 4758, which contains judicial review provisions.

**Attorneys' Fees.** The House Judiciary Committee, Subcommittee on Administrative Law and Governmental Relations, has continued hearings on H.R. 3361 and related bills, which concern awards of attorneys' fees.

**Federal Rules of Criminal Procedure.** The House Judiciary Committee has completed mark-up with respect to the amendments of the Federal Rules of Criminal Procedure and has ordered favorably reported to the House, H.R. 5864, which incorporates these amendments.

**Northern District of Mississippi.** S. 662, providing for holding terms of court of the United States District Court for the Northern District of Mississippi, Eastern Division in Corinth, has been favorably reported by the Senate Judiciary Committee.

**Ethics and Financial Disclosure.** The Subcommittee on Employee Ethics and Utilization of the House Committee on Post Office and Civil Service has held hearings on several bills, among them H.R. 3829. It is anticipated that a clean bill will be introduced some time this Spring.





# GO FJC calendar

May 10, Workshop for District Judges (Sixth Circuit), Louisville, Kentucky

May 10-12, Advanced Management Workshop for Supervising U.S. Probation Officers, Pittsburgh, Pennsylvania

May 16, Judicial Conference Subcommittee on Judicial Statistics, Washington, D.C.

May 16, Judicial Conference Subcommittee on Federal Jurisdiction, Washington, D.C.

May 16-20, Rational Behavior Training Workshop for U.S. Probation Officers, Newport, Oregon

May 16-20, Workshop for U.S. Probation Officers, Portland, Oregon

May 17, Judicial Conference of the Court of Customs and Patent Appeals, Washington, D.C.

May 18-20, Workshop for Probation Clerks, St. Louis, Missouri

May 23-25, Seminar for District Court Clerks, Denver, Colorado

May 23-27, Advanced Management Seminar for Chief U.S. Probation Officers, Washington, D.C.

May 23-24, Judicial Conference Advisory Committee on Civil Rules, Washington, D.C.

May 26-27, Workshop for District Judges (First Circuit), Washington, D.C.

May 31-June 2, Seminar for Chief Probation Office Clerks, Washington, D.C.

June 1, Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 6-8, Seminar for Jury Clerks, Denver, Colorado

## CIRCUIT JUDICIAL CONFERENCES-1977

Dist. of Columbia	May 22-24	Hershey, Pa.
First	May 25	Washington, D.C.
Second	September 8-10	Buck Hill Falls, Pa.
Third	September 18-21	Tantiment, Pa.
Fourth	June 23-25	Hot Springs, Va.
Fifth	May 1-5	Birmingham, Ala.
Sixth	May 11-14	Louisville, Ky.
Seventh	May 9-11	Chicago, Ill.
Eighth	June 29-July 2	Kansas City, Mo.
Ninth	June 11-16	Lihue, Kauai, Hawaii
Tenth	July 13-17	Salt Lake City, Utah

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## THE THIRD BRANCH

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## CRIMINAL CODE ACT INTRODUCED

Senators John L. McClellan and Edward M. Kennedy together with representatives Peter W. Rodino and James R. Mann have introduced major legislation which would revise and modernize the federal criminal code. The bill, S.1437 and its House counterpart, H.R. 6869 are the result of ten years of work which began with the Commission on Revision of the Federal Criminal Law.

Significantly, the measure reflects major compromises by both the liberal and conservative members of Congress and eliminates most of the controversial sections of the prior bill introduced in the last Congress.

Senator McClellan said that 13 controversial provisions in the bill were either deleted or returned to current law and 16 of the 22 major issues involved were resolved using the approach suggested by the leadership last Congress of adopting a policy of retaining current law.

Among the major provisions of the 300-page bill are:

- New mandatory minimum prison sentences for heroin traffickers.
- The elimination of simple possession of small amounts of marijuana as a federal crime.
- A sentencing guideline system designed to attack the problem of unwarranted sentencing disparity between judges.
- Creation of a sentencing authority for the trial judge to award parole for 9/10th of the term of imprisonment imposed.
- Better coverage for white collar crimes.

- Improved provisions to fight organized crime and a new offense of operating a racketeers syndicate.

- A program to compensate the victims of violent crimes with funds derived from criminal fines.

- A major expansion of the civil and criminal jurisdiction of U. S. Magistrates.

Attorney General Griffin B. Bell at a press conference held when the bills were introduced, said that the "identical bills would achieve the reforms necessary to bring the federal criminal code into the Twentieth Century. Reaching this point of introducing legislation has not been easy. There were literally thousands of issues to be resolved. The Congressional sponsors and their staffs devoted a tremendous amount of time and energy to the task, and within the past three months the Department of Justice has spent many hours working with the

(See CODE, page 2)



Senator John L. McClellan

### BILL INTRODUCED CALLING FOR LEGAL DEFENSE OF JUDICIAL OFFICERS

Acting at the direction of the Judicial Conference, the Administrative Office has transmitted to Congress a draft bill which would provide funds for the defense of justices, judges, and other court officers and employees who are named as defendants in civil suits arising from performance of their official duties.

The legislation would provide for the payment of litigation expenses in instances in which the Department of Justice is unable to undertake the representation of such persons.

Director Rowland F. Kirks of the Administrative Office said the legislation was originally recommended.

(See DEFENSE, page 2)



(CODE from page 1)

Congress on the proposed code. The result is as fair and workable a code as has yet been devised, and it has the strong support of the Department of Justice." (A complete outline of the significant provisions of the proposed criminal code can be found in the Congressional Record of May 2, beginning on page S.6836.)

(DEFENSE from page 1)

mended by the Judicial Conference in 1974 and transmitted to Congress on two previous occasions but neither House took action on the measure.

He pointed out in his letter of transmittal accompanying the draft bill that when judges or other judicial officers are sued in their official capacity they are normally defended by the Department of Justice or by the U.S. Attorney. The draft bill would not alter this normal procedure for the defense of judges by the Justice Department in circumstances where it makes its services available to do so. However, he said that "we are now being presented more frequently with situations in which the Justice Department declines to defend a judge, or to authorize the United States Attorney to do so, because it believes that the undertaking of such representation would place it in a position of upholding conflicting interests or of defending positions or policies with which it is not in agreement."

He cited an obvious example in which the Justice Department is seeking a writ of mandamus against a judge, and there is no alternative except to authorize the defendant judge or official to retain private counsel.

Enactment of the legislation "will be helpful in establishing rulemaking authority in the Conference to arrange standard procedures for the defense of judges

in instances where service of the Department of Justice is unavailable" and to guide the Director of the Administrative Office in compensating private attorneys for such services.



## Bulletin

### PRESIDENT SIGNS SICK PAY EXCLUSION BILL

President Carter has signed the sick pay exclusion bill, H.R. 1828, which enables individuals having sick pay to exclude such pay from their income received during 1976.

Congressional action on the measure was not completed prior to the Easter recess and taxpayers who wish to claim the sick pay exclusion may now file an amendment to permit the exclusion of sick pay for 1976.

### FEDERAL DEATH PENALTY BILL INTRODUCED

Senator John L. McClellan, a member of the Senate Judiciary Committee, has introduced a federal death penalty bill which calls for bifurcated trials for federal defendants accused of capital crimes.

Once the defendant is found guilty either by a jury or a judge of any of the federal crimes where the death penalty may be imposed, a second hearing is held to determine whether the death penalty will be imposed.

The bill, S.1382, calls for the death penalty in these cases:

- Death or injury resulting when a prisoner in custody attempts to flee from a federal institution or officer.

(See PENALTY, page 7)

## WIRETAP REPORT SUBMITTED TO CONGRESS

The Administrative Office has submitted its ninth Annual Report on Applications for Orders Authorizing or Approving the Interception of Wire or Oral Communications to Congress.

The summary of the report indicates that during calendar year 1976, 688 applications were made to state and federal judges and only 2 were denied—one by a federal judge of the District of Arizona and the other by a state judge in New Jersey.

Of the 686 applications granted, 137 or 20 percent were granted by federal judges and the remainder by state judges. There were 187 authorized by state judges in New York in 1976 compared to 192 in 1975 and 305 in 1974. In New Jersey, state judges signed 167 orders in 1976 compared to 196 in 1975. Intercepts authorized and approved in the States of Florida, Maryland, New Jersey, and New York accounted for 70 percent of all wiretap authorizations during 1976.

In 1976, there was a 2 percent decrease in the total number of wiretap orders authorized and approved—701 in 1975 compared to 686 in 1976.

There were 378 authorizations comprising 55 percent of the total, where gambling was the most serious offense involved. 190 authorizations, drug offenses were under investigation. Ten applications specified homicide or assault as the major offense.

During 1976, there were 656 arrests and 1,347 convictions reported as a result of authorized intercepts completed in prior years.

(A full copy of the report is available from the Administrative Office of the U.S. Courts Washington, D.C. 20544.)





## CHIEF JUSTICE BURGER ADDRESSES AMERICAN LAW INSTITUTE

This month for the eighth consecutive year, The Chief Justice addressed the opening session of the American Law Institute's annual meeting.

The Chief Justice used this eight-year period — 1969-1977 — to measure the increasing volume of work coming to the United States District and Circuit Courts as well as the Supreme Court. For example, during this period District Court civil filings went up from 77,000 to 130,000 and criminal filings from 35,000 to 41,000. The Courts of Appeals caseload rose from 10,000 to 18,000. He pointed out was the fact that though the federal judiciary has coped with these heavy calendars without additional judgeships, it is unrealistic to believe this stepped-up pace can continue. Overworked federal judges are gratified, however, that 146 more judgeships may soon be created by Congress.

The Chief Justice took the occasion to reiterate the importance of realigning all of the federal Circuits, emphasizing problems which exist in the Fifth and Ninth Circuits. He proposed that each of these Circuits be divided, for administrative purposes, into three divisions, much as the District Courts are now divided. The Fifth Circuit he would divide into Eastern, Central and Western divisions; the Ninth into Southern, Central and Northwest divisions. For more efficient judicial administration and improved administrative purposes, there should be no more than nine judges in any one of the Circuits which would come out from this proposed realignment. He said he was not disheartened by delays in judicial improvements which in the past have often taken many years to accomplish. The delay in realigning the Circuits, for example, is illustrative of "one of the difficulties in the management of the federal system that the sound and sensible solutions occur—with good luck—15 to 20 or more years after

reasonable and objective analysis demonstrates the need." On a poignant note, he compared that Chief Justice Marshall as early as 1810 started urging the creation of the U. S. Courts of Appeals, yet this new tier in the federal system did not come about until 1891, well over half a century after Marshall's death.

The Chief Justice recited some interesting statistics—statistics which reflect changes in our society. And he pointed out that the work of the Supreme Court does in fact reflect in volume and character the work of other courts. Compared were cases heard by the Court in the late 1950's and 1960's when many filings there involved school segregation issues and cases involving equal access to the political process. Today these filings are surpassed by litigation which reflects societal trends. An informal count of cases decided by the Supreme Court since 1969 when Chief Justice Burger took office, not including all such cases decided during the current Term of Court, shows that full signed opinions were written on the following subjects:

	Number of Opinions
Rights of racial minorities (including 24 cases on Indian claims)	99
Rights on prisoners, probationers, and parolees	41
Right to counsel	15
Students' rights	10
Rights of mental patients and mental institutions	5
Rights to welfare recipients	27
Women's rights	21
Rights of non-tenured employees	6
Rights of illegitimate children	11

Media rights under the  
First Amendment and  
statutes

25

The Chief Justice suggested that scholars might find it interesting to compare these figures with other comparable periods.

## CHIEF JUDGE PHILLIPS ADDRESSES SIXTH CIRCUIT JUDICIAL CONFERENCE

Chief Judge Harry Phillips of the Sixth Circuit Court of Appeals presented his report on the judicial business of the circuit to the Circuit Judicial Conference on May 13.

He told the conferees that the litigation explosion in the circuit continues unabated. "The Court of Appeals for the Sixth Circuit is nearly 86 years old, but more than 40 percent of all appeals filed since its creation were docketed in the last 10 years." He pointed out that the docket has doubled since 1969 and quadrupled since 1963 and, significantly, filings in the district courts throughout the circuit likewise have multiplied.



Chief Judge Harry Phillips

From 1968 through 1975 the Court of Appeals heard by the end of its June session every case that was ready for oral argument. In 1976 the court found it necessary to carry over to the next term 180 non-criminal cases that were fully briefed.

This year the Clerk estimates that 736 cases ready to be argued will be carried over to the next session. He pointed out that each judge regularly is assigned to hear

(See CONFERENCE, page 4)



(CONFERENCE from page 3)

oral arguments in 225 cases per year.

Chief Judge Phillips noted that legislation is pending in Congress to create two new circuit judgeships and 11 new district judgeships but additional judgeships will not solve all of the problems, especially at the Court of Appeals level.

"The addition of two circuit judges for our Court will only increase the number of cases which can be heard on oral argument from 675 to 825. We anticipate that over 1,800 cases will require oral argument.

"What has caused such an avalanche in the caseloads of the federal courts? Obviously the growth and increasing complexity of our society and evolving notions of the role of federal courts in mediating problems traditionally handled on state and local levels have played a part, but a recent study shows that there have been no less than 41 laws passed by Congress since 1969 conferring new jurisdiction on the federal judiciary. . . [I]t is of utmost importance that Congress not swamp the federal courts with new and ever-expanding jurisdiction without providing a sufficient number of judges to do the job."

Chief Judge Phillips cited a recent article in the *Stanford Law Review*, *Behind the Legal Explosion*, in which Professor John Barton pointed out that if federal appellate cases continue to grow for the next 40 years at the same rate at which they have grown during the past decade, then by the year 2010 we can expect to have well over 1,000,000 federal appellate cases each year, requiring 5,000 federal appellate judges to decide them.

He told the Conference that he was happy to report that Congress had passed the three judge courts act last August. "This new law eliminates the inefficient requirement for the convocation of the three-judge district court whenever an injunction is

sought restraining the enforcement of a state or federal statute on the grounds of unconstitutionality except in congressional redistricting and legislative reapportionment cases."

He pointed out that one of the acute problems confronting the Circuit today is the avalanche of black lung cases. As of March 31, 1977, there were 1,720 black lung cases pending in the U.S. District Court for the Eastern District of Kentucky alone.

Prior to the 1972 amendments to the Coal Mine Health Safety Act of 1969 these cases were processed administratively similar to Social Security disability cases with the district court acting as the first step in the process of judicial review.

Today, however, the first step in judicial review for such claims is a petition for review in the Court of Appeals and, as a result, these cases come directly to the Court of Appeals bypassing the district court.

As far as black lung cases are concerned, he endorsed the recommendation of the Department of Justice committee that final disposition of issues of fact should be made by a non-Article III tribunal.

He endorsed recommendations for the elimination of diversity jurisdiction and pointed out that often its use in the Sixth Circuit was to delay the trial of lawsuits.

#### CHIEF JUDGE FAIRCHILD DELIVERS STATE OF THE CIRCUIT ADDRESS

Chief Judge Thomas E. Fairchild on May 10 delivered his annual State of the Judiciary address to the Judicial Conference of the Seventh Circuit held in Chicago.

He pointed out that 138 more appeals were filed during 1976 than in 1975 which represents an 11.4 percent increase. While the number of terminations slightly increased, the pending caseload increased substantially.

"Over the last 16 years the number of filings and the number of terminations have almost



Chief Judge Thomas E. Fairchild

quadrupled. If we look at these figures we can understand the pressure on the Court of Appeals to institute new procedures to increase the number of terminations.

"The new ninth judgeship, when approved, will not solve the problem. We will still require help from senior judges from outside the circuit as well as from senior and active district judges within the circuit."

Chief Judge Fairchild told the Conference that the Court recently conducted a survey of the appeals argued in the Court and that each judge stated his reaction concerning each appeal.

"Out of 53 civil appeals there are 10 in which every judge on the panel answered that the appeal should not have been brought. Obviously the appellant's counsel in those cases could have lightened our load without any disservice to his client. I call upon attorneys to review their cases with care before filing an appeal, and at least to consider more objectively whether the appeal should be filed at all."

Turning to the work of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Chief Judge Fairchild said that the failure of attorneys to police their cases in this regard may be one of the reasons for the call for higher standards of admission to practice in the federal courts.

(See CONFERENCE, page 7)



## PBS AIRS SUPREME COURT FILM

Public Broadcasting System has confirmed that there was a national airing of the film *Supreme Court* over PBS member stations on May 26 from 11:00 a.m. to 11:30 a.m. The time was selected to permit secondary schools to incorporate the film into their curricula.

The film should be very helpful in telling the Court's story to students throughout the country. The film is available to schools through the Great Plains National Instructional Television Library, Box 80669, Lincoln, Nebraska 68501.

Bar associations can obtain the film through the Young Lawyers Section of the American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

## DISTRICT OF COLUMBIA DISTRICT COURT REFORMS JURY SYSTEM

The United States District Court for the District of Columbia since 1971 has taken a series of key steps in juror management which have resulted in a savings of nearly \$350,000.

Judge George L. Hart, Jr. in a memorandum to prospective jurors said, "I want you to know that this Court has a continuing concern for the welfare of the jurors who serve here. It is important to us that jurors be efficiently utilized so as not to waste either juror time or taxpayer's money."

Among the steps which Judge Hart listed were:

- Decreasing the size of the jury pool for more efficient utilization (1971).
- Reducing the size of criminal jury panels (1972).
- Sending reports on jury utilization to individual judges (1973).
- Installation of a telephone for jury scheduling (1974).
- Improving jury panel usage 20 percent (1975).

- Supplementing the voter registration list with the drivers license list for jury selection which increased the pool of potential jurors from 309,000 to 476,000 (1976).

- Extending the period between terms of jury service from two to four years to decrease the burden on individual jurors and enable more jurors to serve (1977).



## BAIL REFORM ACT AMENDMENTS INTRODUCED

Acting at the request of the Judicial Conference, the Administrative Office has submitted legislation to amend the Bail Reform Act which will authorize a judicial officer to consider the safety of any other person or the community in setting conditions of release of a person charged with an offense against the federal laws.

In his transmittal letter to the Congress, Director Rowland F. Kirks said the legislation was proposed by the Judicial Conference Committee on the Administration of the Criminal Law and was approved by the Judicial Conference at its meeting last March.

He pointed out that the legislation is needed because there is a conflict between decisions in the Sixth Circuit and the District of Columbia Circuit as to the criteria to be applied in fixing conditions of release for non-capital offenses. The Sixth Circuit held that a judicial officer may consider evidence that the defendant has threatened witnesses and is a danger to the community in determining whether the defendant should be released on bail while the District of Columbia Circuit held that the Act provides only for consideration of those minimal conditions which will reasonably assure the appearance of the person for trial.



# LEGISLATIVE OUTLOOK

A Review prepared by the Administrative Office of pertinent legislation.

**Judicial Disclosure.** The House Committee on Governmental Affairs has conducted hearings on S. 555 and other bills. The bill would require high-level officials in all three branches of government to publicly disclose their financial interests (S. 113, 290, 383 and 673). Testimony was presented by Judge Edward A. Tamm, representing the Judicial Conference of the United States. Other bills have been pending and have been the subject of hearings in the House Committee on Post Office and Civil Service as reported in the previous issue of *The Third Branch*.

**Consumer Protection.** H.R. 6805 is currently in mark up by the Committee on Government Operations of the House of Representatives. The bill would establish a Consumer Protection Agency. In the Senate, S. 1262, a similar bill, is being marked up by the Senate Committee on Governmental Affairs.

**Grand Jury Legislation.** The House Judiciary Committee, Subcommittee on Constitutional Rights, has held hearings on H.R. 94, to reform the grand jury system. Testimony was presented by Judge Frederick B. Lacey on behalf of the Judicial Conference and by Carl H. Imlay, General Counsel of the Administrative Office.

**Garnishment.** During the Senate debate on the Tax Reduction and Simplification Act of 1977 (H.R. 3417) the Senate added an amendment which amends the Social Security Act, section 459. The amendments proscribe in more detail the procedures for garnishment of a federal employee's wages in order to

(See LEGISLATION, page 6)



(LEGISLATION from page 5)  
pay an obligation relating to child support or alimony. The authority to promulgate regulations with respect to the Judicial Branch of the government would be vested in The Chief Justice of the United States or his designee. The conferees on the differing versions passed by the two Houses, accepted this amendment.

**Additional Judgeships.** On May 11 the Rules Committee of the Senate filed a report waiving the Congressional Budget Act, Section 402(a), with respect to Senate consideration of S. 11, providing for the appointment of additional circuit and district court judges. Acceptance of the report and resolution (Senate Resolution 163) will clear the way for floor consideration of the bill.

**Judicial Tenure.** Senator Nunn and 11 other senators has introduced S. 1423, to establish a Council on Judicial Tenure in the Judicial Branch of the government, to establish a procedure in addition to impeachment for the retirement of disabled justices and judges of the United States, and the removal of justices and judges whose conduct is or has been inconsistent with the good behavior required by Article III, Section 1 of the Constitution. The bill has been referred to the Senate Judiciary Committee.

**State of the Judiciary Resolution.** Senators Kennedy, McClellan, Bayh and DeConcini have introduced Senate Concurrent Resolution 22 inviting The Chief Justice to address a joint session of the Congress on the state of the Judiciary. The resolution has been referred jointly to the Committee on Governmental Affairs and the Committee on the Judiciary.

**New Introductions.** S. 1430, a bill to improve the judicial machinery in customs courts by amending the statutory provisions relating to judicial actions and administrative proceedings in customs matters and for other

purposes. The bill would permit the Customs Court to exercise equity jurisdiction and would eliminate the present requirement that a prescribed balance of members of the court be of differing political parties.

S. 1393, introduced by Senator Bayh, to authorize actions by the Attorney General to redress deprivations of constitutional and other federally protected rights of institutionalized persons.

S. 1382, a bill to establish rational criteria for imposition of the sentence of death and for other purposes, introduced by Senator McClellan.

S. 1437, to codify, revise and reform Title 18 of the United States Code, has been introduced by Senators Kennedy and McClellan and is reported on elsewhere in this issue of *The Third Branch*. In addition, Congressman Rodino has introduced an identical bill, H.R. 6869, which has been referred to the Committee on the Judiciary.

**Attorneys' Fees.** S. 270, to permit awards of reasonable attorneys' fees and other expenses for public participation in federal proceedings has continued to be the subject of hearings in the House Judiciary Committee, Subcommittee on Administrative Practice and Procedure.

The Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee has approved a bill to permit awards of reasonable attorneys' fees and other expenses for public participation in federal agency proceedings. However, the full House Judiciary Committee is marking up H.R. 3361, a bill similar to S. 270.

**Rape Evidence** Senator Bentsen has introduced S. 1422, which would exclude certain information in rape cases relating to the victim's sexual behavior. The bill has been referred jointly to the Committee on Governmental Affairs and the Committee on the Judiciary.

## REPORT RELEASED ON CALIFORNIA UNPUBLISHED OPINIONS

The National Center for State Courts has released its report on unpublished opinions of the California Courts of Appeal.

The report analyzed the results of the adoption by the California Supreme Court of Rule 976 in 1964. The rule, as amended January 1, 1972, reads as follows:

**No opinion of a Court of Appeal or of an appellate department of the Superior Court shall be published in the Official Reports unless such opinion (1) establishes a new rule of law or alters or modifies an existing rule, (2) involves a legal issue of continuing public interest, or (3) criticizes existing law.**

The report concluded that the Courts of Appeal are following the criteria set forth in Rule 976 in the vast majority of cases and there is no reason to believe that large numbers of significant decisions are being buried in unpublished opinions.

In addition, the report concluded that mandatory publication of all opinions is neither warranted nor wise. However, the fact remains that opinions which should have been in some cases published are unpublished and the researchers recommended that the problem could be significantly reduced if the Justices of the Courts of Appeal actively participate in reaching a collegial decision respecting publication in every appeal.

The decision whether or not to publish the opinion should be one actively reviewed by all of the Justices and the decisions should not be delegated.

Additionally, the report recommended that each Justice decide independently whether the opinion should be published and the decisions should be recorded

(See OPINIONS, page 8)



CONFERENCE from page 4)

He commended the substantial help which senior judges have given the Seventh Circuit and said their contribution has made it possible to move appeals to oral argument without developing an unwieldy backlog of unargued cases.

He described in detail how the Court of Appeals makes assignments for hearing oral argument. "I should add that once an appeal is scheduled for oral argument, the court is loath to grant an adjournment. Once the argument has been set, convenience of counsel is not recognized as a good cause."

Turning to the caseload of the district courts, he noted that criminal case filings decreased last year by 222, while civil cases increased by 540. "A decrease in criminal filings is especially welcome because of the Speedy Trial Act."

The increase in the civil caseload is significant because until new judgeships are created the burden falls upon the present judges of the district courts. Again, Chief Judge Fairchild said he was very grateful for the significant help of senior district judges who have helped to ease his burden.

He reminded the conferees that the revised Circuit Rules went into effect last July 1 and that Rule 29 provides for an advisory committee to serve as a communications link between members of the bar and the court regarding suggestions for change.

The first suggestion would require the clerk of the district court to transmit the record within 14 days after the notice of appeal while the second most important suggested change is Circuit Rule 4(a) which requires counsel whose appeal requires consideration of an exhibit to designate the exhibit within 5 days after filing the notice of appeal and make sure that the exhibit is in the clerk's possession.

Chief Judge Fairchild said "A very significant project to which I would like to call your attention is the new Seventh Circuit Index. The Index was started as an in-house publication for the benefit of the district and circuit judges in order that they might have a synopsis and an index of Seventh Circuit opinions not yet reported nor digested. It has been a great success."

The Index is in two parts: a brief synopsis of each opinion listed by docket number and a topical index with reference to the cases.

(PENALTY from page 2)

- Gathering or delivering defense information to aid foreign governments.

- Transportation of explosives in interstate commerce for certain purposes.

- Destruction of government property by explosives.

- Destruction of property in interstate commerce by explosives.

- Kidnapping.

- Treason.

- Aircraft piracy.

- The murder of the President and other senior federal officials including federal law enforcement officers or employees of federal prisons.

After the death sentence is imposed, it is subject to review by the Court of Appeals upon appeal by the defendant and such review shall have priority over all other cases.

Senator McClellan pointed out that "the death penalty must be restored if our criminal justice system is to combat the ever increasing tide of violent crimes—crimes of terror—that threaten to engulf our nation, and if the confidence of the American people in our system of justice is to be restored."

The Attorney General in a letter to Senator McClellan said that the Department of Justice believes that the proposed bill would be found by the Supreme Court to meet constitutional requisites.

## REPORT EXAMINES APPELLATE PRIORITIES

The Research Division of the Federal Judicial Center has released a report which enumerates and groups categories of litigation at the federal circuit level which require "priority" handling under statute or rule.

The report notes the 33 Acts and U.S. Code citations which designate certain types of cases for expeditious processing.

A similar report was prepared last year which annotated cases requiring priority handling at the trial court level.

The research staff utilized computer assisted legal research services in the preparation of both reports. The present report contains no general rule for the ordering of priority litigation and states in fact, "There are no priorities among the priorities established within the Code." The report contains a series of summaries of relevant Code sections which are not intended to provide detailed analysis but merely serve to identify conditions under which expediting provisions are operative.

The report examines the language of various expediting provisions to discern different degrees of urgency and establish categories of like cases. Four such categories of cases are set out:

*Criminal and Related Matters; Civil Cases to be Expedited; Civil Cases made preferred or Given Precedence; Civil Cases Advanced or Given Precedence on the Docket.*

Copies of the report will be mailed to all judges, circuit executives, and clerks of court. The Center will continue to update this listing. Comments and suggestions for its improvement are solicited.





# PERSONNEL

## NOMINATIONS

Francis J. Boyle, U.S. District Judge, D.R.I., May 2

Finis E. Cowan, U.S. District Judge, S.D. Tex., May 19

## ELEVATION

Halbert O. Woodward, Chief Judge, U.S. District Court, N.D. Tex., May 2

## DEATH

J. Braxton Craven, Jr., U.S. Circuit Judge, 4th Cir., May 3

# GOFCJCLC calendar

May 31-June 2, Seminar for Chief Probation Office Clerks, Washington, D.C.

June 1, Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.

June 1-2, Judicial Conference Ad Hoc Committee on Bankruptcy Legislation, Denver, CO

June 6-8, Seminar for Bankruptcy Referees, Seattle, WA

June 6-10, Orientation Seminar for U.S. Probation Officers, Washington, D.C.

June 9-11, Seminar for Bankruptcy Clerks, Seattle, WA

June 11-16, Ninth Circuit Judicial Conference, Lihue, Kauai, Hawaii

## (OPINIONS from page 6)

on a cover sheet circulated to all participating Justices.

The report emphasized that although it does not appear that numerous opinions worthy of publication are not being published, there is concern among members of the bar that Rule 976 is being applied inconsistently. The lack of uniform procedures for making publication decisions, as well as the disparate percentages of published opinions among the districts and divisions support this critical view and are ample justification for the modification of the publication decision-making process.

June 13-15, Instructional Technology Workshop for U.S. Probation Officers, Nashville, TN

June 16-17, Civil Criminal and Appeals Docketing Clerks Workshop, Denver, CO

June 18-19, Seminar for Federal Court Reporters, Kansas City, MO

June 21-23, Workshop for District Judges (Third Circuit), Cherry Hill, NJ

June 23-25, Fourth Circuit Judicial Conference, Hot Springs, VA

June 27-29, Seminar for Courts of Appeals Clerks, Chicago, IL

June 27-July 1, Rational Behavior Training Workshop for U.S. Probation Officers, San Diego, CA

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## THE THIRD BRANCH

VOL. 9, NO. 5

MAY 1977

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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## Bulletin of the Federal Courts

VOL. 9, NO. 6

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JUNE, 1977

AUG 18 1977

## MAGISTRATES BILL INTRODUCED

Late last month legislation was introduced in Congress that would broaden the civil and criminal jurisdiction of U.S. magistrates.

Attorney General Griffin B. Bell said that the legislation which was introduced simultaneously in both houses of Congress would make the handling of minor cases less expensive and allow them to be settled more quickly. In addition he said that the bills would "be a step to build greater access to the courts for Middle Americans and the poor." Senator Dennis DeConcini, Chairman of the Senate Judiciary Committee on Improvements in Judicial Machinery, introduced the measure in the Senate while House Judiciary Chairman Representative Peter Rodino introduced the bill in the House.

Senator DiConcini said, "We are all too familiar with the overwhelming case burden and backlog the federal court system faces. This bill would be a step in clearing that burden and in increasing access to all federal courts."

Under the bill, S. 1613 and its counterpart H.R. 7463 magistrates would be able to try all federal misdemeanors and defendants charged with petty offenses would no longer be able to elect a trial in a federal district court.

(See BILL, page 3)

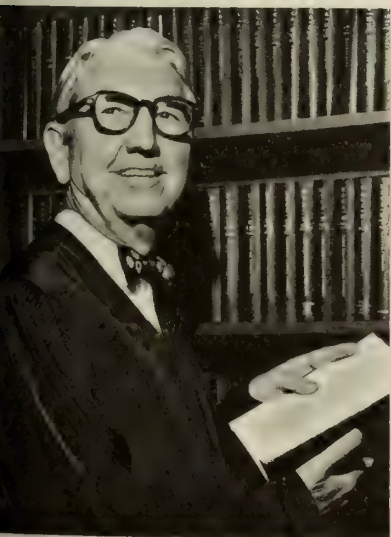
## METROPOLITAN DISTRICT CHIEF JUDGES MEET

The Metropolitan Chief Judges met this spring in Carmel, California to discuss common problems of these courts which handle over 56 percent of the cases filed in the Federal District Courts.

Here are some of the highlights of that meeting:

- The staff of the Federal Judicial Center demonstrated the completed COURTRAN II project by using a video tape which describes the project. This video tape is available for loan to any court which wishes to view it

(See JUDGES, page 2)



Mr. Justice Clark

## MR. JUSTICE CLARK, FIRST FJC DIRECTOR, EULOGIZED

On June 13th, Justice Tom C. Clark died in his sleep, just hours before he was to hear cases in the United States Court of Appeals for the Second Circuit. Though he had been failing in health during the last few months, and his energies were waning, he continued to assist his brethren in the federal courts. It was the way he wanted it.

Justice Clark was appointed Attorney General of the United States in 1945, culminating a distinguished career of Government service, one of the few attorneys general to come up through the ranks. In 1949 President Truman appointed him Associate Justice of the Supreme Court of the United States, where he served until 1967. Retirement in that year was anything but that. He immediately took on herculean tasks — turning out articles for law reviews, lecturing at law schools, addressing bar associations and generally challenging everyone in the legal profession to take up the torch and dedicate their efforts to modernizing our system of justice. The Justice's new role gave him more time to further study activities he had already started.

(See CLARK, page 2)



(CLARK from page 1)

Among other things he led an ABA Committee to study and recommend improved procedures for the enforcement of disciplinary procedures in the legal profession and he leveled some harsh criticism that brought long overdue results.

One of the Justice's main concerns was the problem of handling swelling caseloads in the federal courts and he had long done whatever he could to promote and support the concept of a supportive agency to serve as a research arm and to be a forum for the continuing education and training for the Federal Judiciary. To his great delight and satisfaction, the Federal Judicial Center was created by Public Law December 20, 1967. The Chief Justice and other members of the Judicial Conference asked the Justice to serve as its first Director. Chief Justice Warren, when announcing the appointment, commented that "no person of our nation is better qualified to form such a Center. It is almost as though his entire career had been preparing him for the mission of the Center." How true.

He was not discouraged by a meager budget and a small staff and immediately started organizing. He performed wonders, determined to convince the judiciary that the Center could serve a need; to convince the staff that they needed to double their efforts; and to convince an impecunious and perhaps skeptical Congress that their faith was not misplaced. In a speech on May 23, 1968, Justice Clark talked about his work at the Federal Judicial Center and said he found his duties "neither weary, stale, flat or unprofitable. . . . [T]hey afford me a staff of honor for my retirement."

When he sat as a United States District Judge to try a protracted antitrust case in the Northern District of California, he was reported to be the first Supreme Court Justice who, in retirement, went to the trial bench. It came as a surprise to his friends that Justice Clark asked for service on the district courts for he had never been a judge before ascending the Supreme Court bench.

Following that he sat in the Courts of Appeals, and again set a record by being the first retired Supreme Court Justice to sit in all eleven Circuits.

It was apparent he loved being a judge—the oral argument and colloquy with counsel; reading the briefs (many times criticizing them as being inadequate and poorly written); the opinion writing; the "shop talk" with his brethren; and, not the least important, the fraternization with judges throughout the country.

Now, almost a decade later, the Center carries out its Congressional mandate with a budget which permits activities on a national scale far beyond the Justice's dream. He often pointed to this part of his professional career as one of the most important tasks he undertook.

At memorial services at the National Presbyterian Church in Washington on June 22, members of the Supreme Court and a host of friends and relatives from throughout the country eulogized Justice Clark and thereby marked the end of an era.

(JUDGES from page 1)

or to have it viewed by supporting staff.

- Rowland F. Kirks, Director of the Administrative Office, reported on A.O. activities of interest to the judges. There was extensive discussion concerning obtaining adequate security from the General Services Administration and problems of

inefficiency caused by heating or air conditioning.

- The Conference had previously requested the Federal Judicial Center to conduct a survey of voir dire practices in the Federal District Courts and the results of that survey were presented. It revealed that approximately 70-75 percent of

the district judges conduct the examination without oral participation by lawyers, but with written questions from them indicating a gradually increasing trend in the extent to which the examination is conducted by the judge in federal courts.

- The Conference went on record as fully supporting the work of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts.

- A wide ranging panel discussion was held on problems related to discovery and possible solutions. Judge Charles Renfrew (N.D. Cal.), who was appointed last September to head a committee to study discovery, opened the discussion by reporting that the Committee had been asked by the Director of the Federal Judicial Center to examine such questions as: "Are there problems with discovery? Is discovery being abused? If so, what areas? What types of alternative remedies or solutions should be studied?" Paul Connolly, Chairman of the American Bar Association Litigation Section's Committee on Discovery reported on the draft version of his Committee's recommendations which included revisions in the rules which would limit discovery to the issues, and provisions for discovery conferences early in the case, to define issues and arrange a discovery schedule.

They had considered a rule which would limit parties to five depositions, fifty interrogatories and ten hours of document discovery without a showing of good cause. However, the Committee decided not to make such a recommendation but to urge that a metropolitan district court consider putting such a rule

(See JUDGES, page 1)



JUDGES from page 2)

to effect for a year on an experimental basis and the Federal Judicial Center would assist in evaluating its effect.

Federal Judicial Center Director, Judge Walter E. Hoffman, expressed concern that pretrial procedure must be distinguished from abuses of discovery. Although there are early discovery abuses they could not be remedied by attempting to abolish pretrial procedure, he said.

Judge Hoffman announced that the next meeting of the conference would be held on October 6-7 in Brownsville, Texas.

BILL from page 1)

Full-time magistrates specifically designated by the district courts would be authorized to conduct civil jury and non-jury trials without limitation on the amount of damages.

In addition, the bill also requires the Judicial Conference to formulate standards and procedures to insure the highest quality of justice in magistrate courts.

Hearings began early this month and the Attorney General testified that, "The genius of the magistrate system is that it can handle cases in an expeditious manner which might be subject to judicial overkill and a long wait in the district court."

In a letter of transmittal accompanying the draft of a similar bill, A.O. Director Rowland F. Kirks said that, "It is the view of the Judicial Conference that the proposals in this draft bill would enable the U.S. District Courts to make more efficient use of the U.S. magistrates and will significantly improve the administration of the

trial jurisdiction of U.S. magistrates."

The proposed bill could lead to as many as 16,000 cases a year being shifted from judges to magistrates.



## CENTER RELEASES NEW PUBLICATIONS

Judge Walter E. Hoffman, Director of the Federal Judicial Center, announced that over twenty publications on a wide range of topics are being released this summer. The Center recently initiated a new publications program with the objective of wider dissemination of the results of studies and educational programs. Under the new program four categories have been established. Publications being issued by category are:

### Reports

- *Priorities for Handling Litigation in United States Courts of Appeals* (Publication Number FJC-R-77-1). A compilation of statutes and rules directing the Courts of Appeals to accord preferential scheduling to various types of filings.

- *An Evaluation of Computer Assisted Legal Research Systems for Federal Court Applications* (FJC-R-77-2). A field evaluation of alternative computer assisted legal research systems for federal court use.

- *An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts* (FJC-R-77-3). Legislative proposals to establish minimum mandatory sentences were examined to determine the impact on sentences such legislation would have had if in effect in Fiscal Year 1976.

- *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Adminis-*

*tration* (FJC-R-77-4). A report on the controlled experiment conducted in cooperation with the Second Circuit to assess the effect of pre-argument conferences on mode of disposition, lawyer preparation, and judicial burden in federal appeals.

- *Recommended Procedures for Handling Prisoner Civil Rights Cases in Federal Courts* (FJC-R-77-5). This report, prepared by a committee of federal judges, offers both short-term and long-term recommendations for meeting the problems arising out of actions brought by prisoners under 42 U.S.C. § 1983.

- *The Conduct of Voir Dire Examination: Practices and Opinions of Federal District Judges* (FJC-R-77-7). A survey of current practice and opinion among federal judges as to conduct of the voir dire examination and an analysis of relevant policy issues.

- *Evaluation of Computer Aided Transcription* (FJC-R-77-8). A report on the results of a pilot project which included experimental use of computer-aided transcription, an evaluation of the number of reporters who could be expected to economically use this technique, an evaluation of impact, and an assessment of technical and policy variables affecting use of the technique in federal courts.

- *The Impact of Video Use on Court Function: A Summary of Current Research and Practice* (FJC-R-77-9). A review of research findings and applications of various forms of video technology in court settings.

- *Observation and Study Commitments: An Evaluation of Current Practice* (FJC-R-77-13). A clinical psychologist looks at the entire process associated with observation and study commitments

(See PUBLICATIONS, page 4)



(PUBLICATIONS from page 3)

and makes recommendations for the improvement of current practices.

- **The District Court Studies Project.** The District Court Studies Project, designed primarily to determine which procedures produce the best results in terms of speed and productivity consistent with the highest standards of justice, will culminate with a final report entitled *Case Management and Court Management in United States District Courts* (FJC-R-77-6-1). In addition, six other reports from the Project are scheduled to be published in 1977, starting with *Judicial Controls and the Civil Litigative Process: Discovery* (FJC-R-77-6-3), an examination of discovery practices in six metropolitan district courts.

- **Federal Court Library Study.** The study of federal court libraries is producing a number of reports. Although the major publication *Federal Court Library Study: Report and Recommendations* (FJC-R-77-10-1) will not be available until late summer, subsidiary reports are now being printed. These include:

- *Books that Judges and Other Court Officials Have and Do Not Need* (FJC-R-77-10-2)

- *Inventory of Periodicals in Federal Court Libraries* (FJC-R-77-10-3)

- *Lawbook and Law Research Problems As Stated by Judges and Other Officials of the Federal Courts* (FJC-R-77-10-4)

- *Locations of Federal Court Facilities* (FJC-R-77-10-5)

- *Lawbook Collections at Unoccupied Federal Court Locations* (FJC-R-77-10-6)

- *Procurement of Law Library Materials for the United*

*States Courts* (FJC-R-77-10-7)

- *Progress Report on Study of Facsimile Transceivers* (FJC-R-77-10-8)

- *Procurement of Law Library Materials for the United States Courts* (FJC-R-77-10-7)

- *Data on Individual Case Citations by the United States Courts, 1971-1976* (FJC-R-77-10-9)

- *Architectural Design Standards for Federal Court Libraries: A Working Paper* (FJC-R-77-10-10)

- *Library Personnel: Jobs, Qualifications, Recruitment, Salaries, and Training* (FJC-R-77-10-1)

#### Staff Papers

(A Staff Paper is the product of a short-term research effort by Center staff. Generally undertaken in response to queries from a Judicial Conference Committee, members of the judiciary, or from the Center Board or Director, a Staff Paper normally involves less exhaustive research methods than a Center Report. Together, Staff Papers and Reports are intended to give an overall view of Center research activities.)

- *Survey of Local Civil Discovery Procedures* (FJC-SP-77-1). Summary of the results of a questionnaire survey of individual judge standing orders and local rules relating to discovery practices in federal district courts.

- *Appellate Court Caseweights Project* (FJC-SP-77-3). A study of a technique for measuring relative burdens caused by caseloads of U.S. appellate courts based upon judges' estimates of 23 casetypes.

- *Air Disaster Litigation: The Need for Legislative Reform* (FJC-SP-77-6). Study of suggestions for handling litigation resulting from aircraft accidents.

#### Education and Training Series

- *Educational Media Catalog: A Catalog of Audio Cassettes, Films and Video Cassettes* (FJC-ETS-77-2). A listing of materials available through the lending program of the Center's Education and Training Division.

- *Appellate Review of Trial Court Discretion* (FJC-ETS-77-3). A presentation at a seminar for appellate judges by Professor Maurice Rosenberg.

- *Appellate Opinion Writing* (FJC-ETS-77-4) and *Stare Decisis* (FJC-ETS-77-5). Presentations at a seminar for appellate judges by the Honorable Edward D. Re, Chief Judge of the United States Customs Court.

- *Consumers of Justice* (FJC-ETS-77-6). A presentation at a seminar for appellate judges by Professor Daniel J. Meador.

- *The Role of the Judge in the Settlement Process* (FJC-ETS-77-13). District Judge seminar presentations by the Honorable Hubert L. Will, U.S. District Judge, Northern District of Illinois; the Honorable Robert R. Merhige, Jr., U.S. District Judge, Eastern District of Virginia; and the Honorable Alvin B. Rubin, U.S. District Judge, Eastern District of Louisiana.

#### Handbooks and Manuals

- *Law Clerk Handbook* (FJC-M-77-1). A basic procedural guide for use by federal district and appellate court law clerks. Its use is intended to complement local practices. Copies will be distributed to all law clerks in September.



## JUDICIAL FELLOWS SELECTED

Three Judicial Fellows have been chosen for the 1977-78 Program.



Judith Chirlin

Judith C. Chirlin is an attorney who specializes in litigation. She comes from Los Angeles and has taught in the Judicial Administration Program at the University of Southern California. Miss Chirlin graduated from U.S.C. Law School where she served as the Note and Article Editor as well as the Book Review Editor of the *Southern California Law Review*. She is an undergraduate at George Washington University. Miss Chirlin majored in Political Science and has received a Masters in that same field at Rutgers University. Her varied work experiences include four years as staff assistant to a Congressman. She has studied the use of confidentiality stipulation in trade secret litigation, has been a member of a committee charged with recommending a system for standardization of local rules for the Ninth Circuit, and has been

concerned with the establishment of an Institute on Computers and the Law, sponsored by U.S.C.

C. Edward Good is a member of the faculty of the University of Virginia School of Law. Mr. Good has played a vital role in the development of a legal research service for practicing attorneys which utilizes both full-time attorneys and law students. He has been a recipient of the Corning Glass Works Traveling Fellowship which permitted worldwide travel and study. Mr. Good received his J.D. from the University of Virginia and his A.B. in Economics from the University of North Carolina. He is co-author of the *Legal Malpractice Reporter*.

George E. Feldmiller, a partner in a prominent Kansas City Law firm, is a short-term Judicial Fellow. He brings the perspective of a practicing attorney who is interested in timely and inexpensive delivery of quality legal services. Mr. Feldmiller received a B.S. in Public Administration from the University of Missouri. Since graduation from the University of Michigan Law School, where he was Associate Editor of the law review he has been exclusively engaged with general civil litigation in both state and federal courts with particular emphasis upon corporate litigation in the federal courts.



### FIRST CIRCUIT HOLDS WORKSHOP

The First Circuit Judicial Conference was held in Washington, D.C. this month, thus permitting the judges in this Circuit to participate in a two-day workshop held at the Center. Judge William J. Campbell (N.D.Ill.) was Chairman.

The workshops, co-sponsored by the ABA's National Conference of Federal Trial Judges and the F.J.C., have been highly successful endeavors. They have

concentrated on specific subjects of concern to the federal trial judges, through single presentations on a given subject, followed by small group discussions. The workshops in this manner permit a free exchange of ideas and a sharing of mutually helpful information.



Above, a photograph of the First Circuit Workshop during the presentation on class actions. This session was videotaped in color and will later be available to members of the Federal Judiciary.

This month's workshop started out with a discussion on class actions, with Judge William H. Becker (W.D. Mo.) and Professor Arthur R. Miller, of the Harvard Law School, making presentations. Judge Sam C. Pointer, Jr. (N.D. Ala.) outlined problems which could arise from the new Federal Rules of Evidence, with emphasis on hearsay problems, exceptions to the hearsay rule and

(See WORKSHOP, page 9)

## LEGISLATIVE OUTLOOK

### CONGRESSIONAL ACTION

S. 1437, the new Federal Criminal Code Reform Act, introduced by Senators McClellan and Kennedy was the subject of hearings on June 7, 8, and 9 before the Subcommittee on Criminal Laws and Procedures of the Senate Judiciary Committee. Testimony was directed in this series of hearings specifically and principally toward the provisions relating to sentencing and the new

(See LEGISLATION, page 6)



C. Edward Good



(LEGISLATION from page 5)

Sentencing Commission. Witnesses appearing included Attorney General Griffin B. Bell, Norman Carlson of the Bureau of Prisons, former Deputy Attorney General Harold Tyler, Judge Gerald Tjoflat and Judge William H. Webster representing the Probation Committee and the Advisory Committee on Rules of Practice and Procedure of the Judicial Conference. In addition, Judge Marvin E. Frankel and Judge Morris E. Lasker, both of the Southern District of New York, presented their views. Two additional days of hearings were held June 20 and 21.

The House Judiciary Committee has continued to hold markup sessions on H.R. 6, the bill to revise the bankruptcy laws.

The Senate Judiciary Committee's Subcommittee on Improvements in Judicial Machinery held a series of hearings on S.1612 and S.1613, bills which would expand the jurisdiction of U.S. magistrates. S.1612 incorporates the Judicial Conference proposal while S.1613 embodies the suggestions of the Department of Justice. (See story page 1).

The Senate has passed S.195, which would include Bottineau, McHenry, Pierce, Sheridan and Wells Counties in the Northwestern Division of the District of North Dakota.

The Senate has also passed S.11, which provides an additional 109 permanent federal district judgeships and four temporary judgeships. It would add 35 courts of appeals judgeships and create an Eleventh Circuit Court of Appeals consisting of Louisiana and Texas.

The Fifth Circuit would consist of Alabama, Florida, Georgia, Mississippi, and the Canal Zone. The proposed effective date of the creation of the division of the Fifth Circuit into the Fifth and Eleventh Circuits would be October 1, 1977.

## BILLS INTRODUCED

H.R. 7239, to amend Chapter 313 of Title 18 of the United States Code, by Mr. Rodino (Judicial Conference proposal) is a Federal Act for the commitment of incompetent persons.

H.R. 7240, a bill to amend § 1963 of Title 28, United States Code, to provide for the registration of criminal judgments of fine or penalty (Judicial Conference proposal).

H.R. 7241, a bill to provide for the defense of judges and judicial officers sued in their official capacities (Judicial Conference proposal).

H.R. 7242, a bill to amend § 3146 (relating to release of defendants in non-capital cases prior to trial) of Title 18 of the United States Code, to provide for the consideration of the safety of other persons or the community in the decision as to whether and on what terms to permit such release (Judicial Conference proposal).

H.R. 7243, to amend § 1332(a)(1) of Title 28, United States Code, to reduce the jurisdiction of the United States district courts in actions between citizens of different states (Judicial Conference proposal).

H.R. 7244, to amend the Canal Zone Code with respect to the appointment and service of probation officers and for other purposes (Judicial Conference proposal).

H.R. 7245, a bill to amend the Federal Rules of Criminal Procedure to provide for appellate review of sentences (Judicial Conference proposal).

The Senate Judiciary Committee, Subcommittee on Criminal Laws and Procedures, held hearings on S.1382 to establish rational criteria for the imposition of the death penalty. Witnesses appearing represented the Department of Justice, the American Civil Liberties Union, and the National District Attorneys Association.

## CRIMINAL RULES

H.R. 5864, which will approve with modifications certain proposed amendments to the Federal Rules of Criminal Procedure and disapprove other proposed amendments, passed the House April 19. The bill is pending in the Senate Judiciary Committee. Two of the rules which were disapproved have been reintroduced so that the Congress may decide these matters through legislation.

H.R. 5865 would provide a procedure for obtaining search warrants on the basis of oral testimony. H.R. 5866 would change the procedure for the removal of certain state criminal cases to the federal courts. Both of these bills are pending in the House Judiciary Committee.

In accordance with Public Law 94-349, if the Senate does not act on the amendments in House bill 5864, these rules would take effect on August 1, 1977 in the form proposed by the Supreme Court.

## The Third Branch

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



In the House of Representatives, the Judiciary Committee has engaged in mark up of H.R. 3685 providing for additional circuit and district court judge-ships. On June 9th, the Subcommittee approved for full Committee action a clean bill in lieu of H.R. 3685. The bill has not yet been introduced.

The House Committee on the Judiciary, Subcommittee on Criminal Justice has scheduled mark up of H.R. 5865, to provide a procedure for obtaining search warrants on the basis of oral testimony.



## STATE-FEDERAL

The Federal Judicial Center endeavors to keep abreast of all activities of the State-Federal Judicial Councils. It would assist Center personnel in responding to requests for information on Council work if reports could be received on meetings, subjects discussed and how the Councils function.

The following is a report on some Council activities received since the last column was published in *The Third Branch*.

### OREGON

The State-Federal Judicial Council for Oregon met on April 18. In the absence of Council Chairman, Chief Justice Arno Denecke, the meeting was called to order by U.S. District Judge Robert Belloni.

Judge Belloni reported on the conduct of a recent one-day trial in Portland where State Tax Court Judge Carlisle Roberts and U.S. District Judge Gus Solomon jointly presided. At issue was a citizen's claim regarding similar federal and state travel expense deductions on his income tax returns. All participants agreed the combined procedure produced significant savings in time.

There was general discussion on judicial problems relative to

handling prisoner petitions. Federal judges have offered their knowledge and experience in these types of cases to any state judges who would find it useful, since prisoners often resort to state courts after failing in federal court.

Other areas of discussion were movement of judges to various locations of holding court to stem the growth of backlog, the effect of plea bargaining on caseloads, the potential effect which might take place on state courts should federal diversity jurisdiction be abolished, legislative attempts to remedy problems in the area of sentencing, and the value of sentencing panels.

It was reported that the Federal Court's practice of dismissing on its own motion cases filed against state court judges which are shown clearly on their face to be groundless or lacking federal jurisdiction has been working well.

U.S. Circuit Judge Alfred T. Goodwin described the use of automated legal research and retrieval by members of the federal bench and stated that experience to date had been extremely helpful. State court judges anticipated similar resources at some future date.

Discussion was held on the recent speech of Oregon Supreme Court Justice Hans Linde, "Fair Trial and Press Freedom—Two Rights Against the State!"

### VIRGINIA

On June 25 the State-Federal Judicial Council for Virginia convened for a one-day meeting at Hot Springs.

Among the agenda items were the following: the elimination of diversity jurisdiction cases in federal courts, the establishment of a certification system for federal questions to state supreme courts, a report on the construction progress for the headquarters of the National Center for State Courts at Williamsburg, Virginia, and the

feasibility of a one-day/one-trial jury system.



Chief Judge Clement F. Haynsworth

### CHIEF JUDGE HAYNSWORTH ADDRESSES ANNUAL JUDICIAL CONFERENCE

In his remarks to the Annual Judicial Conference of the Fourth Circuit, Chief Judge Clement F. Haynsworth, Jr. pointed out that the basic purpose of a circuit conference is "to consider the administration of justice in the federal courts and what might be done to improve it. We are in such a state of crisis that I cannot refrain from inviting your attention to it."

He said that if current projections continue for the 12 months ending June 30, filings in the Court of Appeals will reach 1,669 which represents an increase of 201 regular docket cases or 14%.

When he came to the court in 1957 and for some years thereafter, annual filings were about 225 or 75 cases for each of the three judges. Today, the filings represent about 238 cases for each of the seven judges, "a burden which I submit is impossible to bear."

After describing the various techniques which the Court has used to deal with the ever in-

(See HAYNSWORTH, page 8)



(HAYNSWORTH from page 7)

creasing caseload, he said, "Thus by every reasonable means we have sought to avoid the growth of a great backlog with long delay in reaching cases for disposition."

However, he emphasized that the growth in pending cases has reached the point where the court has exhausted its internal capacity to substantially increase productivity.

He said that one of the key reasons for this large increase in filings has been the increasing volume of legislation which Congress has passed over the last 10 to 15 years.

"I submit to you that this trend must be checked. This is not to suggest that Congress abandon the protection it has provided, but if the federal judicial system is to be preserved in anything resembling its present form, alternative means of administering those protections must be provided."

As an example he suggested the elimination in most instances of judicial review in social security and black lung cases.

Turning to the District Courts of the Fourth Circuit, Judge Haynsworth said they have been suffering comparable burdens and the additional help which will be given them if Congress provides additional judges "will enable them to grapple with their current workloads, but it hardly will equip them to handle substantial increases in the years to come."

He pointed out that the proposed new judgeships will be of tremendous assistance to the Court of Appeals and the District Courts of the Fourth Circuit but "unless many other things are done, the volume of cases in the District Courts and the volume of cases in the Court of Appeals will continue to increase at alarming rates, and the courts, as reinforced by the pending legislation after it is enacted, will be unable to cope with the still higher case levels."

He concluded his remarks by saying "If runaway increases continue into the next few years, we will need still more judges with the consequence that our collegiality may be lost, our character will certainly be greatly altered, and we may face the necessity of dividing the Circuit into two or more circuits."



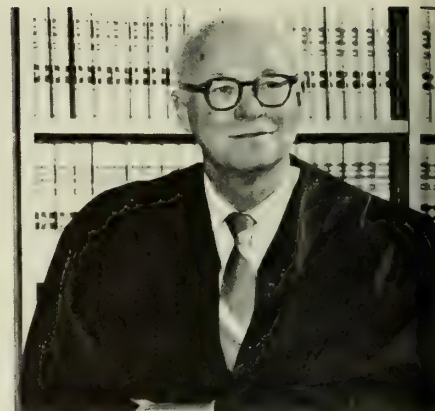
### **PRESIDENT ESTABLISHES COMMITTEE TO SELECT FEDERAL JUDICIAL OFFICERS**

In an Executive Order 11992 issued May 24, President Carter established a seven-member Committee on Selection of Federal Judicial Officers.

According to the Executive Order, which was published in the May 26th Federal Register at page 27195, the function of the Committee is: "When requested by the President, the Committee shall conduct inquiries to identify persons who may be qualified to serve as Federal Judicial Officers, other than United States Circuit Judges or District Judges, and shall conduct investigations of those persons to determine their qualifications."

The purpose of the Committee is to select candidates for the Court of Customs and Patent Appeals, the Customs Court, the Court of Claims and possibly for the Tax Court.

The Executive Order was drafted broadly to allow the President to use the Committee to select not only judges of special courts but, if he so desired, candidates for nomination to vacancies on the Supreme Court of the United States.



Chief Judge John R. Brown

### **CHIEF JUDGE BROWN PRESENTS FIFTH CIRCUIT STATE OF THE JUDICIARY ADDRESS**

Chief Judge John R. Brown (CA-5) in his report on the State of the Federal Judiciary delivered to the 1977 Circuit Judicial Conference, pointed to the problems as well as the progress which has been made over the past year in his Circuit, one of the largest and busiest in the nation.

Among the problems he pointed to were:

- A disproportionate workload to the relative population percentage in the nation.
- An almost exponential increase in incoming business.
- The increase in new business, especially in some of the large metropolitan district courts that now exceeds the physical capabilities of the authorized judges.
- Civil rights and prisoner cases with class action aspects which present almost unmanageable challenges.
- The preemptive time table demands of the Speedy Trial Act which continue to be disruptive.
- Concern that the day is soon at hand when few traditional civil cases will be heard.
- In the Court of Appeals a serious backlog that continues to develop.



- Fear that priority cases will shortly crowd out or postpone for years non-preference cases scheduled for oral argument.

However, he said help has come or will be forthcoming in a number of ways:

- By adding adequately compensated supporting personnel in the form of clerks, magistrates, law clerks, and paralegals.

- By judges' continuing imaginative innovations in judicial actions.

- By improved relationships with Congress, the media and the bar.

- By the Congress through passage of the Omnibus Judgeship Bill at an early date in this, the 95th Congress.

- By the bar with increased participation in facing the problems of the court and increased competency of the bar in improving lawyers' capacity in the indispensable role of advocates.

Turning to the work of the nineteen district courts of the Fifth Circuit, Chief Judge Brown pointed out that civil cases have risen by 12.7 percent to 30,542 which exceeds the national average growth. He said the cause of this increase was a continuous litigious society and cited four examples:

- A 98.5 percent increase in the rise of social security cases.

- More product liability cases.

- A significant increase in cases under the Civil Rights Act of 1964.

- A tremendous increase in and condemnation cases filed in our district courts.

However, he said he had some good news and bad news as far as prisoner cases were concerned. The good news is that habeas corpus petitions are down by 263. The bad news is that prisoners' civil rights suits are up by 573 cases.

He said that the performance on terminations by the district

judges of his Circuit was spectacular and only two of nineteen district courts in the Circuit did not equal or exceed significantly the national average and this was simply because they did not have enough cases to terminate.

As far as criminal cases in the district courts were concerned, there was a decrease of 5.2 percent in the total number of criminal cases filed nationwide. Despite this there was an overall increase in the Southern District of Georgia which experienced an increase of 181.2 percent in criminal case filings and in the Western District of Louisiana where the filings rose by 146.5 percent to 996 cases.

When both civil and criminal cases are combined, the true picture reveals that for 1976 over 1975 there was a 12.7 percent increase of 4,591 cases in the Fifth Circuit District Courts.

He told the conference that the action of the Senate Judiciary Committee which approved over 100 additional judgeships was very good news since the Fifth Circuit would receive thirty-five additional judgeships.

He pointed to the magistrates' bill passed last session which extended their jurisdiction and said: "The total effect is that while magistrates' duties have increased, hopefully their work will lessen the burden now being borne by the judges."

Turning to the work of the Court of Appeals, he noted that

(WORKSHOP from page 5)

an update of the rules. Judge C. Clyde Atkins (S.D. Fla.) and Professor Kenneth R. Redden, of the University of Virginia School of Law, concluded the meeting with a review of common problem areas and a report on some typical criminal cases involving the rules.

The last in this second series of workshops was held at Cherry Hill, New Jersey June 22-23.

The third workshop series for the Sixth, Seventh and Eighth

compared with filings in 1961 of 630 cases the business of the Fifth Circuit has grown 467 percent by a total of 3,629 filings. "Terminations by judicial action after briefing, hearing, or submission are 146 for the Fifth Circuit, again the highest in the nation in F.Y. 1976, against a national average of 96." To respond to this crisis in litigation, he pointed to the screening system which the Court of Appeals now uses to dispose of a substantial number of cases without oral argument.

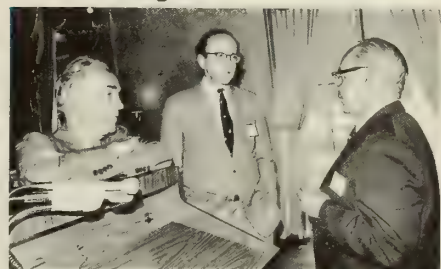
A new complication he said, "is the impact of priority preference on calendaring non-preference cases for oral hearing. For the past several years preference cases constitute 47 percent of all cases determined by a judge to require oral argument."

On the subject of splitting the Fifth Circuit, Chief Judge Brown reported that the Judicial Council voted to split the Circuit and that they also agreed they would need twelve new Circuit judgeships if the Circuit was split.

In conclusion, he told the Conference, "Today, the picture I have painted for you of the situation in the courts of this Circuit is, in the main, one of accomplishments, continued aggressiveness, and hope for the future."



Circuit judges will be held August 3-4 in Chicago.



Judges attending the First Circuit Workshop, pictured above, are (l. to r.): Chief Judge Frank M. Coffin; Judge Levin H. Campbell (CA-1) and Judge William H. Becker (W.D. Mo.).



# aoa fjc calendar

June 27 Federal Judicial Center Board Meeting, Washington, D.C.

June 27-July 1 Rational Behavior Training Workshop for U.S. Probation Officers, San Diego, CA

June 28-July 1 Advanced Seminar for U.S. Magistrates, San Francisco, CA

June 29-July 2 Eighth Circuit Judicial Conference, Kansas City, MO

July 6-8 Seminar for U.S. Probation Officer Assistants, Washington, DC

July 7-8, Judicial Conference Subcommittee on Judicial Improvements, Colorado Springs, CO

July 11-13, Instructional Technology Workshop for U.S. Probation Officers, Milwaukee, WI

July 13-16, Tenth Circuit Judicial Conference, Salt Lake City, UT

July 13-15, Seminar for the Staff of U.S. Magistrates, Seattle, WA

July 18-19, Management for Supervisors, Baltimore, MD

July 18-22, Orientation Seminar for U.S. Probation Officers, Washington, DC

July 22, Judicial Conference Bankruptcy Committee, New York City

July 25-26, Management for Supervisors, Richmond, VA

July 25-26, Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, DC

July 26-28, Judicial Conference Review Committee, Mackinac Island, MI

July 26-28, Judicial Conference Advisory Committee on Judicial Activities, Williamsburg, VA

July 29, Judicial Conference Joint Committee on Code of Judicial Conduct, Williamsburg, VA

July 28-29, Judicial Conference Criminal Law Committee, Bar Harbor, ME

Aug. 1-2, Judicial Conference Court Administration Committee, Williamsburg, VA

Aug. 1-2, Judicial Conference Advisory Committee on Civil Rules, Washington, DC

Aug. 2-4, Workshop for Chief Probation Office Clerks, Salt Lake City, UT

Aug. 3-4, Workshop for District Judges, Chicago, IL

Aug. 8-9, Management for Supervisors, Philadelphia, PA

Aug. 11-12, Management for Supervisors, Burlington, VT

Aug. 16-19, Advanced Seminar for U.S. Magistrates, Denver, CO

Aug. 22-26, Rational Behavior Training Workshop for U.S. Probation Officers, Louisville, KY

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Office of the United States Courts

## PERSONNEL

### APPOINTMENT

Howell W. Melton, U.S. District Judge, M.D. Fla., May 12.

William M. Hoeveler, U.S. District Judge, S.D. Fla. May 26.

### NOMINATION

Russell G. Clark, U.S. District Judge, W.D. Missouri, June 13.

Edward L. Filippine, U.S. District Judge, E.D. MO, June 22.

### CONFIRMATION

Finis E. Cowan, U.S. District Judge, E.D. MO, June 22.

### ELEVATION

C. Clyde Atkins, Chief Judge S.D. Fla., June 13.

## THE THIRD BRANCH

VOL. 9, NO. 6 JUNE, 1977

## THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

VOL. 9, NO. 7

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AUG 15 1977

## RECORDS REPORT RELEASED

Judge J. Edward Lumbard (CA-2) who served as the Federal Judiciary's representative to the National Study Commission on Records and Documents of Federal Officials has summarized the portions of the 148-page report which deal specifically with documents of members of the federal court system.

Here is his summary.

On April 28, 1977 the National Study Commission on Records and Documents of Federal Officials (Public Documents Commission) submitted its Final Report to President Carter and both houses of Congress. The Report calls for public ownership of all of the job-related documentary materials of Presidents, Members of Congress, Supreme Court Justices, and Federal Judges.

The Commission was established by statute in December 1974 against the background of the August 9, 1974 resignation of former President Richard M. Nixon and the subsequent controversy surrounding his Presidential papers and tape recordings. Mr. Nixon's claim to the 12,000,000 pages and the tape recordings accumulated during his Presidency was predicated on the historical tradition that the records and documents of the highest federal officials may be removed upon leaving office, and treated as if they were personal property.

The Public Documents Commission concluded that this practice must bow to the public interest and that materials generated by federal officials in

the course of doing the business of the public should be public property.

To maximize public access to governmental records, the Commission has recommended that the institutional records of Congress, the Federal Judiciary, and certain units of the Executive Office should be brought within the scope of existing records-management legislation and subject to the access provisions of the Freedom of Information Act. Presently the Act provides a mechanism to request access to records of executive branch agencies, and a right to judicial review if the agency denies access under one of the specified exemptions.

The extension of the Freedom of Information Act to all of the institutional records of the federal government will substantially increase the citizen's capacity to find out about the official acts of the government.

At present, an agency head can keep agency records closed, subject to the Freedom of Information Act, for a period of 50 years from the date of creation. The Commission has recommended that that period be reduced to 30 (See RECORDS, page 2)



Judge Walter E. Hoffman

### JUDGE HOFFMAN LEAVES JUDICIAL CENTER

Judge Walter E. Hoffman, the third Director of the Federal Judicial Center, officially left that position on July 18 to return to Norfolk, Virginia as a senior — but far from inactive — federal district judge for the Eastern District of Virginia.

His departure, which was required because he reached the statutory age limit, followed nearly 3 years of major progress during which the Center began, among other projects, computerizing the nation's federal courts and conducted a major study of the operations of federal district courts.

On July 8, members of the Center staff, officials of the Administrative Office and the Supreme Court gathered for a (See HOFFMAN, page 2)



(HOFFMAN from page 1)

reception and dinner in his honor. Following this dinner, Chief Justice Warren Burger praised him for his outstanding service as Center Director and presented him with a Certificate of Appreciation from the Judicial Conference of the United States.

Judge Hoffman intends to lead a very busy life. He told the gathering that he has accepted the Chairmanship of both the Judicial Fellows Commission and the Conference of Metropolitan Chief Judges. In addition, the Supreme Court on June 29 appointed him Special Master in the case of *U.S. v. Maine*. This fall, he will teach at the Marshall-Wythe School of Law, College of William and Mary as the school's Tazewell Taylor visiting professor. He will continue his affiliation with the Federal Judicial Center as Director Emeritus.

In a message to Federal Judicial Center staff on the eve of his departure, Judge Hoffman said, "As I leave the Center as Director, I want each of you to know how much I have appreciated your loyalty and cooperation over the past two years and nine months. I have complete confidence that this spirit on the part of all employees will continue with my successor in office, Professor A. Leo Levin."



(RECORDS from page 1)

years, after which there would be general access without the need to resort to a Freedom of Information Act request.

For those materials that are not a part of the institutional records of government, but are generated by or for the use of individual officials, the Commission has recommended the creation of a new category of publicly owned property, which it calls "Public Papers." Examples of this material are confidential communications between the official

and his staff; working papers integral to the decision-making process; conference notes of Justices or Judges; or confidential advisory memoranda.

The Commission decided to suggest special procedures for access to the so-called "Public Papers" of federal officials for two reasons. The first of these was the desire to avoid subjecting an incumbent President, sitting Justice or Judge, or Member of Congress to the possibility of constant litigation over denials of immediate access which would arise from immediate application of the Freedom of Information Act.

The second involved the strong public interest in preserving the integrity of the decision-making process within all branches of government. An official must be assured full and candid advice if he is to perform his duties properly. The Commission believes that unless some protections against premature public disclosure are provided for these sensitive materials, officials and their advisors may commit less to writing, and be less than candid in that which is written. This would impair the responsible and effective discharge of official duties, and result in a less than full and accurate record.

To accommodate these considerations, the Commission has recommended that the federal official who accumulates "Public Papers" be permitted to impose access restrictions upon them for a period not to exceed fifteen years after he leaves federal service. It believes that this formula balances the very real needs for assurances of some degree of confidentiality in the give and take of official decision-making against the right of the public to have reasonable access to the documentary materials produced by public servants. On the basis of past experience, it is likely that federal

(See RECORDS, page 3)



Chief Judge James R. Browning

## CHIEF JUDGE BROWNING REPORTS TO CA-9

Chief Judge James R. Browning reported on the State of the Circuit when the Ninth Circuit's Judicial Conference opened on June 13 at Kauai, Hawaii.

This year the Conference met for the first time with a completely reorganized format which has been two years in the making.

In his State of the Circuit message, Chief Judge Browning emphasized that the Circuit needed more judges to keep abreast of its huge caseload. He said he was optimistic that the Omnibus Judgeship Bill would be enacted by the present Congress, bringing some relief.

He pointed out that within a decade the number of appeals had increased by 231 percent from 877 in 1966 to 2,907 in 1976. During this period the authorized Circuit judgeships only increased from nine to thirteen. Moreover, some of the district courts in the Circuit experienced almost equally startling caseload increases.

Since he anticipated the early enactment of the Omnibus Judgeship Bill, the Chief Judge urged the lawyers attending the Conference to establish search committees in their districts in order to find the best qualified lawyers and judges and to encourage them to submit applications to the Circuit Judge Nominating Commission. A Planning Committee of the Circuit Council recently has been appointed and is working to



prepare for the arrival of the new judges, he added.

Chief Judge Browning described recent changes in the administrative organization of the Circuit. Under the new structure of the Circuit Conference, lawyers will participate more actively and more independently; they are selected by the lawyers themselves to represent the practicing lawyers' viewpoint.

The lawyers have an "obligation to speak up about the administration of justice in our courts... clearly and honestly."

On the final day of the Conference, Carl J. Schuck, a Los Angeles attorney, was elected by the Executive Committee of the Conference to be Chairman of the 1978 Ninth Circuit Judicial Conference.

In addition, the Chief Judge discussed some new developments during the past year including the formation of the Conference of Chief Judges of the District Courts of the Ninth Circuit which will meet twice a year to consider such matters as intercircuit judicial assignments, improvements in Speedy Trial Act procedures, the review of attorney claims under the Criminal Justice Act and standardization of local rules of court.

He also cited some administrative developments in the Court of Appeals. One of the most significant, he said, was the creation of the caseload management committee. The committee has established a system for maintaining a continuous inventory of pending appeals and is working with the Federal Judicial Center to develop a computer program for systematic control of the processing of appeals in the court.

Chief Judge Browning said that this spring the Court of Appeals began a new system of opinions publication. Under this procedure headnotes for all published

opinions with a cumulative digest of cases is furnished to the judges regularly.

In closing, the Chief Judge discussed the Court's new practice of appointing the district judges to serve with the circuit judges on council committees. One of the most successful of these joint committees is the Legislative Liaison Committee which is chaired by Judge Charles B. Renfrew (N.D. Cal.). Among its other activities, this committee has worked effectively to obtain Congressional approval of additional Circuit and District judgeships for the Circuit.



#### (RECORDS from page 2)

officials will choose to make a large portion of these "Public Papers" available well within the fifteen years.

The Commission feels that the special merit of this plan is that, after the relatively short period during which a former President, Member of Congress, Supreme Court Justice, or Federal Judge is permitted to limit access, the "Public Papers" will be fully open, subject only to restrictions necessary in the interest of national security, or to prevent a clearly unwarranted invasion of privacy. There will be no need for a request and review procedure such as that provided for by the Freedom of Information Act. This will mean greater public access, swifter public access, and a far less costly administration of such papers.

As applied to the Judiciary, institutional records would include case files, dockets, minutes, administrative and other

materials.

The Commission has recommended that the definition of a "federal agency" in 40 USC §472 be clarified so that laws and regulations relating to archival administration and records disposition would apply to the records of the Supreme Court and the records of committees or other agencies within the Federal Judiciary that serve in an advisory capacity with respect to the exercise of the constitutional authority of the judicial branch.

The district courts and courts of appeals are presently considered federal agencies within 40 USC §472.

The "Public Papers" of the Justices and Judges would consist of those documentary materials, exclusive of court records, generated or received by members of the Judiciary in connection with their official duties and retained in their files after final judgment has been entered in a case. These papers would include such materials as conference notes and bench memoranda prepared by law clerks.

Justices or Judges would be permitted to place restrictions on public access to such papers for a period of time not to exceed fifteen years from the time they leave federal office. At the expiration of the fifteen year closure period all public papers, except those the disclosure of which would constitute an unwarranted invasion of personal privacy, would be open to general access.

Under the recommendations the "Personal Papers" of the Judiciary, which would include those materials of a purely private or non-official character (such as diaries or personal correspondence), would remain the Justice or Judge's private proper-

(See RECORDS, page 4)



(RECORDS from page 3)

ty. The Commission has recommended, however, that members of the Judiciary be encouraged to arrange for the preservation and eventual availability of their personal papers.

The Commission has recommended that any legislation enacted pursuant to its report should have prospective application only. The Commission believed that this would minimize any disruption of existing records-management practices, provide notice to federal officials, and avoid any legal problems that might arise if such legislation were given retroactive effect.

Fifteen of the seventeen Commissioners endorsed the final report. A separate minority report was filed by the Commission Chairman and one other member. It recommends placing all materials accumulated by federal officials in connection with their official duties into the single category of "Public Records." The access provisions of the Freedom of Information Act would apply to "Public Records" as of their creation or receipt, subject to existing exemptions and whatever additional exemptions or privileges that would be necessary to protect sensitive materials.

The Commission plans to make a copy of the majority report available to each member of the Federal Judiciary. Until a sufficient number of copies are printed, a copy will be sent to the Chief Judges of all federal appellate courts.

## The Third Branch

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### 1978-79 JUDICIAL FELLOWS PROGRAM SEEKS CANDIDATES FOR SIXTH YEAR

Highly talented young professionals are invited to apply for the 1978-79 Judicial Fellows Program. The Program, similar to the White House and Congressional Fellowships, attracts outstanding talent from multidisciplinary backgrounds. Two fellows will be chosen to spend 1978-79 observing and contributing to projects designed to improve judicial administration. An additional purpose of the Program is to promote those individuals who will not only make a contribution during their year as Judicial Fellows, but who will continue to make a contribution to judicial administration in the future.

Now entering its sixth year, the Program is administered by the National Academy of Public Administration. It was instituted through grants from the American Bar Endowment, the Ford Foundation, and the Edna McConnell Clark Foundation.

Candidates should have at least one post graduate degree, at least two years of professional experience, and, preferably, familiarity with the judiciary. Salary is negotiable based upon the salary structure of the Federal Judicial Center and the salary history of the candidate. The Fellowships begin in September 1978, and have a duration of one year. The application deadline is November 4, 1977.

Application information and literature on the Program are available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543.

### BUREAU OF PRISONS SUMMARIZES NEW RULES

The Bureau of Prisons has compiled a summary of recent changes in their rules which they believe would be of interest to federal judges and parole officers.

J. Michael Quinlan, Executive Assistant to the Director of the Bureau of Prisons, has prepared the following summary for the guidance of the Federal Judiciary.

Until recently, the only rules pertaining to the Federal Prison System which were published in the Code of Federal Regulations dealt with the general authority of the Director, prohibition against traffic in contraband and inmate accident compensation. The working guidelines for the Bureau of Prisons were spelled out in policy statements.

In compliance with a decision by the U.S. Court of Appeals for the District of Columbia in *Ramer v. Saxbe*, a wide range of prison rules are now being published in proposed form in the Federal Register. These rules will eventually be published in Chapter V of the Code of Federal Regulations.

The first group of rules published under this new and broader publication schedule appeared in the May 23, 1977 issue of the Federal Register, at pages 26,333 to 26,346. This publication includes general definitions, and rules on extra good time, contact with persons in the community, inmate correspondence, inmate visiting, contact with the news media, inmate discipline and special housing units, and legal matters.

All institutions have a policy of open general correspondence, which permits a quick flow of outgoing mail. Inmates may correspond with whomever they wish. General correspondence is opened, checked for contraband and may be spot-checked as to contents. Inmates may send sealed correspondence to the courts, to the Congress, to certain



other governmental officials, and to attorneys. Incoming mail from these sources may not be read or copied by staff, and must be opened for contraband inspection only in the inmate's presence.

Inmate visiting is encouraged, and takes place in open visiting areas with the fewest possible constraints.

Representatives of the news media are encouraged to visit federal institutions and can interview individual inmates if the offender agrees.

Rules governing the administration of inmate discipline comply with the procedural safeguards established by the Supreme Court in *Wolff v. McDonnell*, 418 U.S. 528 (1974).

At commitment, inmates are given a booklet which provides general information about the

institution, and lists prohibited acts in the institution. When a prohibited act is committed, line staff are encouraged to informally resolve less serious charges. For more serious misconduct, the inmate is given a written copy of the charges, and disciplinary action is administered with a two-level process: a unit disciplinary committee to hear and review all misconduct charges, and an institution discipline committee for the most serious offenses. Only this latter committee has authority to impose the sanctions of forfeiting good time, segregated confinement, disciplinary transfers, and recommendations for rescinding a parole grant.



## CHIEF JUSTICE PROPOSES ELIMINATION OF DIVERSITY JURISDICTION

In an address to the Minnesota State Bar Association recently, Chief Justice Robert J. Sheran (Sup. Ct. Minn.) told the members of the bar that long standing lines of demarcation between jurisdictions of federal and state courts should be changed.

Chief Justice Sheran called the theory which put diversity litigation in the federal courts a myth. He pointed to "long-arm statutes" which bring a significant number of diversity cases to state courts, and said there was no basis for any claims that the litigants are not being treated fairly.

This proposal has long had support from prominent leaders of the bench and bar, but Congressional moves to do away with diversity jurisdiction still meet with opposition. Chief

Justice Sheran met one of the arguments — that the state courts would be inundated with heavy caseloads they could not handle — by citing some statistics. In Minnesota, where there are four United States District Judges, nearly one-fifth of their cases would be handled by approximately 200 state judges.

Chief Justice Sheran reported that the trial courts of Minnesota are adequately prepared to accept responsibility for this litigation and further endorsed the change because it would preserve the identity and independence of their state court system.

The importance attached to the subject by many of the Chief Justices is apparent for it will be high on their agenda list when the Conference of Chief Justices meets in Minneapolis in July.

## CENTER PUBLISHES REVISED EDITION OF PROCEDURES FOR HANDLING PRISONER CIVIL RIGHTS CASES

In January, 1976, the Center published a tentative report on procedures for handling prisoner civil rights cases, cases arising under 42 U.S.C. § 1983. That report, prepared by a committee of judges chaired by Judge Ruggero Aldisert, contained standards for processing prisoner condition-of-confinement cases through the courts, model forms to expedite the processing, and commentary on the current state of the law in this expanding and changing field.

The committee recently completed work on a revised, expanded report. Increased jurisdiction of magistrates, changes in the case and statutory law, and responses to the first report were incorporated in this edition. Both reports have been labeled "tentative" evidencing the committee's commitment to continue to study the procedures and to monitor the impact of its recommendations. The report will be forwarded to all judges, magistrates, and clerks.

Other members of the committee include Judge Robert C. Belloni (Dist. Ore.), Judge Robert Kelleher (C.D. Calif.), Judge Frank McGarr (N.D. Ill.), Judge John Wood (W.D. Tex.) and Magistrate Ila Jeanne Sensenich (W.D. Pa.). Professor Frank Remington served as reporter to the committee.

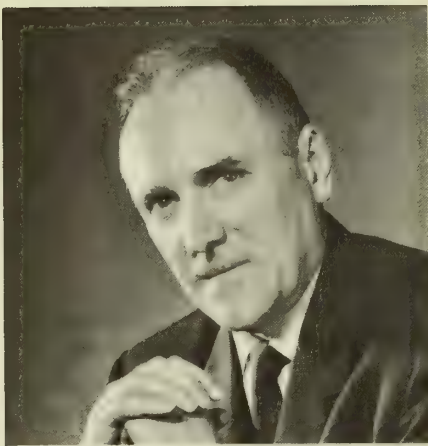


## YALE STUDY RECOMMENDS SENTENCING REFORM

On June 8, the authors of a five-year Yale Law School study on sentencing and parole appeared before the Senate Judiciary Subcommittee on Criminal Laws and Procedure and released their study entitled *Toward a Just and Effective Sentencing System: Agenda for Legislative Reform*.

(See STUDY, page 6)





Chief Judge Floyd R. Gibson

### CHIEF JUDGE GIBSON ADDRESSES EIGHTH CIRCUIT JUDICIAL CONFERENCE

In his opening remarks to the Eighth Circuit Judicial Conference last month in Kansas City, Chief Judge Floyd R. Gibson pointed out that at last year's Conference he had discussed the alarming increase in case filings, caseloads, and backlogs at both the District and Circuit levels. He said that "this disquieting trend continues unabated ... and more cases are being docketed than ever before. The caseload of individual judges has risen to a point where, if relief is not forthcoming, the effectiveness of the federal judiciary may be compromised."

Chief Judge Gibson reported to the Conference that Congress has finally realized that there is a "caseload crisis" in the federal courts and is moving to ameliorate the situation. He pointed to the expansion of magistrate jurisdiction which has proved to be of immeasurable assistance to district court judges and has allowed for more expeditious disposition of many cases. In addition, Congress is considering legislation which would create much needed additional federal judgeships but that "regardless of the possible increase in judicial positions, steps should be taken to decrease the flow of cases into the federal courts."

Turning to the debate over whether diversity jurisdiction should or should not be removed from federal courts, the Chief Judge said that the most compelling argument in favor of abolishing it is that state judges, possessing expertise in the interpretation and application of state law, should resolve cases presenting purely non-federal issues.

The question, he said, should be resolved by Congress. "It is imperative that Congress impose some restrictions on diversity jurisdiction."

He pointed out that in 1976 over 24 percent of all civil cases filed in federal courts were jurisdictionally based on diversity of citizenship. These cases comprised 65 percent of all civil jury trials and over 11 percent of filings in the Courts of Appeals.

He acknowledged the valuable assistance which the Eighth Circuit has received from its senior judges and singled out the work of Senior Judge Marion C. Matthes who is working on a program of pre-hearing conferences on appealed cases which may result in the settlement of a substantial number of these cases, or at least would qualify and limit the issues presented for review.

He pointed to the criticism which individuals and consumer groups have made on the American system of justice and said that "in some respects, the legal system does ill-serve the public. It is often too expensive, too slow, and too unresponsive to serve as an effective arbiter for all disputes, however minor."

The Chief Judge felt that the deficiencies in this system could be rectified and commended bar associations for working with the state judiciaries to ferret out unethical lawyers.

In closing, the Chief Judge noted that modern streamlined court procedures should be implemented to avoid

unnecessary expense and technical delay in the litigation process. "Efforts should be made to forestall the filing of repetitive and frivolous actions by prisoners. Extended and complex civil litigation, moving tortoise-like through the system, should not be allowed to consume many years of judicial time. We need alternative procedures, and possibly specialized forms for the handling of these cases. Also, non-judicial forums may be established to resolve many minor disputes without burdensome expense or delay."



(STUDY from page 5)

The authors, Pierce O'Donnell, a Washington attorney, Michael J. Churgin, Assistant Professor of Law at the University of Texas at Austin, and Dennis Curtis, Director of Criminal Studies at Yale Law School, contended that unbridled discretion has long been the hallmark of sentencing and parole decision-making.

The study is the product of an extensive investigation of the entire federal sentencing, probation and correctional systems. Among the participants were Judge Marvin E. Frankel (S.D.N.Y.), Maurice H. Sigler, former Chairman of the Parole Commission and representatives from the Bureau of Prisons, Department of Justice and Yale Law School faculty and students.

(For information on how to obtain copies of this report, contact the FJC Information Service.)





## JUDICIAL CONFERENCE COMMITTEE ON ADMISSION STANDARDS CONTINUES HEARINGS

Recently, the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts held its third meeting to continue its deliberations as to whether there should be established model standards for admission of attorneys to practice in the federal courts.

The Committee also heard a report from one of its Subcommittees, chaired by Judge Malcolm Wilkey, which is investigating the rules in various federal courts that permit law students, on a limited basis, to practice before those courts. This Subcommittee is considering the prospect of recommending to the Committee a model rule for limited admission of law students to practice in the federal courts as a device by which students can learn the technical skills of advocacy.

The Standards Committee also received a presentation by another of its Subcommittees, chaired by Judge Sherman Finesilver, regarding the licensing and recertification practices of other professions. This comparative study of developments in other professions to ensure competence should provide the Standards Committee with a better perspective from which to decide what the legal profession can or may do in attempting to ensure the adequacy of persons licensed to practice in the federal courts.

At the Carmel meeting the Committee heard a report from the Federal Judicial Center regarding the research project

## Chief Justice Calls for New Methods

### CONFERENCE ON MINOR DISPUTE RESOLUTION HELD

May 27 marked the beginning of a three-day American Bar Association, "National Conference on Minor Dispute Resolution" which focused on improved methods to settle minor personal and monetary conflicts.

Prior to the beginning of the Conference ABA President Justin A. Stanley noted that when disputes of this type involve competing lawyers and a judge the cost bears no reasonable relationship to the matters in controversy.

Recognizing that the disputes are not without significance in the eyes of the parties, Stanley pointed out that they often breed a frustration and cynicism which undermines public confidence in our system of justice.

Most of the sessions were held at Columbia University Law School. Among the items receiving program attention were small claims courts as reflected by a major study of the National Center for State Courts and dispute resolution methods as alternatives to formal court action.

Highlighting the three-day conference was a major address by Chief Justice Burger.

The Chief Justice noted that this Conference was an important follow-up to the 1976 Pound Conference which addressed the problem of popular dissatisfaction with the administration of justice. He recognized that "minor dispute" was a term of art in that such conflicts can create "festering social sores and undermine confidence in society." He praised the Conference as a selected group of thoughtful professionals gathered to propose new remedies for "people problems". He noted that many of them had no doubt had their preconceptions shaken as a

result of the deliberations.

Taking note of the increased demands on our system of justice by our changing society and noting also the varying levels of complexity of the kinds of cases now coming to the courts, he observed that, "What is beginning to emerge, through the fog is that we lawyers and judges—aided and abetted by the inherently litigious nature of Americans — have created many of these problems.

"It may be that even if we disciples of the law do not invent new problems, we have done far too little to solve them or channel them into simpler mechanisms that will produce tolerable results."

He urged a broader view which would avoid casting all disputes into a legal framework where only legally trained professionals can effect resolution. Rejecting the notion that traditional litigation can be a cure-all for all the problems that beset citizens in our highly complex social and economic system, he called for experimentation with different types of conflict resolution mechanisms noting, among others, arbitration, local or neighborhood tribunals utilizing non-lawyers and non-judges, and increased participation by other types of professionals and paralegals.

In conclusion, he commended the American Bar Association and the Conference for being venturesome and imaginative in seeking new ways to reduce social irritations and tensions with minimum expense to those who can least afford it. He said, "I hope we will see concrete experiments and accomplishments as your work proceeds."



(See STANDARDS, page 8)



# PERSONNEL

## APPOINTMENT

Finis E. Cowan, for the District Court for the Southern District of Texas, June 14

[In the June issue, Judge Cowan's District was incorrectly listed. It should have read S.D. Texas.]

## ELEVATIONS

Frank G. Theis, Chief Judge, U.S. District Court for the District of Kansas, June 22

L. Clure Morton, Chief Judge, U.S. District Court for the Middle District of Tennessee, July 15

## NOMINATIONS:

T.F. Gilroy Daly, U.S. District Judge for the District of Connecticut, June 29

Harold L. Murphy, U.S. District Judge for the Northern District of Georgia, July 7

Nicholas J. Bua, U.S. District Judge for the Northern District of Illinois, July 19

Earl E. Veron, U.S. District Judge for the Western District of Louisiana, July 19

Stanley J. Roszkowski, U.S. District Judge for the Northern District of Illinois, July 19

## CONFIRMATION:

Russell G. Clark, U.S. District Judge for the Western District of Missouri, July 1

## DEATH:

Chief Judge Rhodes Bratcher, U.S. District Judge for the Western District of Kentucky, July 25

# GO OFFIC calendar

Aug. 1-2 Judicial Conference Court Administration Committee, Williamsburg, VA

Aug. 2-4 Workshop for Chief Probation Office Clerks, Salt Lake City, UT

Aug. 3-4 Workshop for District Judges (Sixth, Seventh and Eighth Circuits), Chicago, IL

Aug. 8-9 Management Training for Supervisors, Philadelphia, PA

Aug. 8-10 Workshop for Financial Deputy Clerks, Salt Lake City, UT

Aug. 11-12 Management Training for Supervisors, Burlington, VT

Aug. 16-19 Advanced Seminar for U.S. Magistrates, Denver, CO

Aug. 22-26 Rational Behavior Training Workshop for U.S. Probation Officers, Louisville, KY

Aug. 22-26 Orientation Seminar for U.S. Pretrial Services Officers, Washington, DC

Aug. 24-25 Judicial Conference Budget Committee, Sea Island, GA

Aug. 29-30 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Hilton Head, SC

(STANDARDS from page 7)

which is expected to provide the Committee with knowledge of what federal judges and lawyers think about the current performance of advocates in the federal courts, both trial and appellate.

This research project includes the mailing of questionnaires to all federal judges and participation of judges in a case evaluation, on an anonymous basis, of the performance of attorneys appearing before them in actual cases over a short time period. The results of this research will be made available to the Committee by February of 1978.

Following the Carmel meeting the Committee began holding public hearings across the United States in order to permit any persons or organizations, including representatives within the Federal Judiciary, to make their views known to the Committee.

Information about these hearings may be obtained from Carl H. Imlay, General Counsel, Administrative Office of the U.S. Courts.

Sept. 26-Oct. 1 - Seminar for Newly Appointed District Judges, Washington, DC

THE THIRD BRANCH

VOL. 9, NO. 7 JULY, 1977

THE FEDERAL JUDICIAL CENTER

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### AMENDMENTS TO THE CRIMINAL RULES ENACTED

President Carter has signed into law an Act effectuating with modifications certain of the amendments to the Federal Rules of Criminal Procedure which were originally proposed by the Supreme Court in April, 1976.

Among the changes made by the amendments are the provision for telephonic issuance of search warrants, the redefinition of procedures for the disclosure of grand jury proceedings and the removal of state criminal prosecutions to federal court. These amendments modified take effect October 1, 1977, by Public Law No. 95-578, 91 Stat. 319, approved July 30, 1977.

The Congress in this Act approved the amendment which had been proposed to Rule 15, Fed.R.Crim.P., to reduce the number of peremptory challenges of jurors available to each side in criminal cases.

The report of the Senate Judiciary Committee (S.Rep. No. 95-354) states that this proposed amendment "drew the most vigorous criticism" from persons commenting and testifying with respect to the proposals to amend the Rules. The report concluded that this Amendment should be studied by the Judicial Conference, which should have the benefit of the comments that have been made on this rule for future

(See RULES, page 2)

## CODE MOVES FORWARD

On May 2, 1977, Senators McClellan and Kennedy introduced S. 1437, the Federal Criminal Code Reform Act bill (known as S. 1 in the past Congresses) and additional hearings were held on the new bill as previously reported in *The Third Branch*. S. 1437 was reported out from subcommittee to the full Senate Judiciary Committee on August 5, 1977. An identical bill, H.R. 6869, was introduced by Chairman Rodino and is pending in the House Judiciary Committee.

The provisions of S. 1437 may be summarized as follows:

### Title I: Codification, Revision and Reform of Title 18

Defines the criminal jurisdiction of the United States. Declares a general rule that the existence of federal jurisdiction is not preemptive. Enumerates offenses which are exceptions to the rule. Lists culpable states of mind; defines them; and requires that, unless otherwise specified, a culpable state of mind must be shown with respect to each element of every offense in this Act. Specifies the particular state of mind which must be shown if an offense is described without designating the required state of mind.

Details standards relative to the liability of an accomplice, of an organization for the conduct of an organization.

Sets forth criminal offenses against the United States. Designates a category for each offense for purposes of punishment rather than prescribing a penalty for each crime separately.

Organizes offenses by type rather than alphabetically. Specifies the types of offenses as follows: (1) offenses of general applicability, including criminal attempt, criminal conspiracy, and criminal solicitation; (2) offenses involving national defense, including treason and related offenses,

(See CODE, page 2)



### JUDGESHIP BILL DELAYED UNTIL FALL

The Omnibus Judgeship Bill which was passed by the Senate May 24 and referred to the House Judiciary Subcommittee on Monopolies and Commercial Law has been delayed until at least the week of September 12.

There are three pending bills in the House Judiciary Subcommittee which would create a varying number of circuit and district judgeships. Subcommittee Chairman Peter W. Rodino decided to wait until after the August recess to report the legislation to the full Judiciary Committee.



(RULES, from page 1)

guidance if the rule is considered in the future.

The amendments which had been proposed to Rules 6(e) and 41(c) (2), Fed. R. Crim. P., have been allowed to take effect only in modified form as enacted by Public Law No. 95-78. The changes made by the Congress in the proposed amendment to Rule 6(e) limit the additional government personnel, aside from the attorney for the government, to whom disclosure of matters occurring before the grand jury may be made.

The rule as approved permits this sort of disclosure to "such government personnel as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney's duty to enforce Federal criminal law" and whose names are required to be disclosed to the district court. It also expressly provides that a knowing violation of the secrecy requirement may be punished as a contempt of court.

Rule 41(c)(2) as amended provides for a telephone search warrant procedure in circumstances where it is reasonable to dispense with the requirement of a written affidavit presented in person to a magistrate. The alternative telephonic procedure had been recommended by the Supreme Court in its April, 1976, submission of proposed amendments to the Congress.

The Senate Judiciary Committee report on the Act amending the Rules states, "The committee agrees with the Supreme Court that it is desirable to encourage Federal law enforcement officers to seek search warrants in situations where they might otherwise conduct warrantless searches by providing for a telephone search warrant procedure...." It is provided that the finding of probable cause for a warrant upon oral testimony and the contents of such a warrant shall be the same as in the case of a warrant upon

affidavit.

The Congress has permitted to take effect the amendments proposed by the Supreme Court to Rule 23(b) and (c) as described by the Advisory Committee note (House Document No. 94-464).

These amendments were intended to clarify that the parties may stipulate before trial to the return of a valid verdict by less than twelve jurors as the need develops to excuse jurors after the trial commences.

Such a stipulation would make unnecessary the use of alternate jurors during trial and would preclude a mistrial in the event of disability to a juror after the deliberations have begun. The amendments further clarify in a nonjury case that a request for findings of fact must be made before the general finding and that such findings of fact may be oral.

The Congress in Public Law No. 95-78 accepted the Supreme Court's proposal to further define the procedures for removal of criminal cases from state to federal courts. In lieu of effecting this change through a new criminal rule, however, the Congress amended section 1446 of Title 28, United States Code, to accomplish this result. This section as amended requires a petition for removal of a criminal prosecution to be filed not later than 30 days after the arraignment in state court unless good cause is shown to extend the time for filing.

It further requires such petition to include all grounds for removal and provides that the failure to state existing grounds shall constitute a waiver thereof unless good cause is shown. The filing of a removal petition does not prevent the state court from proceeding with the prosecution except that a judgment of conviction shall not be entered unless the removal has been first denied by the federal court.

Section 1446 as amended further requires the federal district

courts to examine removal petitions "promptly" and to hold evidentiary hearings thereon unless "it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted," in which case its summary dismissal shall be ordered.

The proposed amendments on which the Congress has acted have been submitted by the Supreme Court in accordance with 18 U.S.C. §3771. The effective date of such proposals, normally 90 days following their submission to the Congress, was postponed by Public Law No. 94-349, 90 Stat. 822, in order to allow additional time for the Congress to pass a law modifying the proposed amendments, which has now occurred through the enactment of Public Law No. 95-78.



(CODE, from page 1)

sabotage and related offenses; espionage and related offenses; and atomic energy offenses; (3) offenses involving international affairs, including foreign relations crimes, and immigration, naturalization, and passport crimes; (4) offenses involving government processes, including general obstructions of government functions, obstructions of law enforcement, obstructions of justice, contempt offenses, perjury and related offenses, and commercial bribery and related offenses; (5) offenses involving taxation including internal revenue offenses and customs offenses; (6) offenses involving individual rights, including civil rights crimes, privacy crimes, and political rights crimes; (7) offenses involving the person, including homicide offenses, assault offenses, kidnapping and related offenses, highjacking offenses, and sex offenses; (8) offenses involving property, including arson and other property destruction



DDE, from page 2)

offenses, burglary and other criminal intrusion offenses, counterfeiting and related offenses, commercial bribery and related offenses, and investment, monetary, and antitrust offenses; and (9) offenses involving public order, safety, health, and welfare, including organized crime offenses, drug offenses, explosives and firearms offenses, riot offenses, public health offenses, gambling offenses, obscenity offenses, prostitution, failure to obey an officer, and violating state or local law in a federal enclave.

Includes among new federal offenses (1) a series of crimes dealing with obstruction of justice and misuse of power for political purposes, (2) consumer fraud, (3) possession of eavesdropping devices, (4) possession of burglar's tools, and (5) conspiracy of the United States to assassinate a foreign official outside the United States.

Revises other offenses, among them (1) contempt (adds invalidity of court orders as a defense), (2) unlawful discrimination (includes sex as unlawful basis), (3) rape (includes all sexual assaults, modifies evidentiary requirements and redefines statutory rape), (4) failure to appear or testify (adds new offenses), (5) riot (narrows applicability), and (6) marijuana possession (decriminalizes possession of small amounts and reduces penalties for possessing larger quantities).

Repeals provisions defining certain crimes including those relative to registration of Communists and communicating with foreign country for the purpose of influencing policy.

Directs that, except as otherwise specifically provided, a defendant who has been found guilty of an offense described in a federal statute be sentenced in accordance with this Act.

Authorizes a sentencing court



The Chief Justice swears in Professor A. Leo Levin as the new FJC Director at the installation ceremony on August 3 at the Supreme Court. Mrs. Levin participated in the ceremony.

to (1) order a presentence study of a defendant, either before or after receipt of the presentence report and commit the defendant to the custody of the Bureau of Prisons pending receipt of such a study or (2) order a presentence psychiatric examination of a defendant.

Specifies factors to be considered by a sentencing court, including: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to deter similar conduct, protect the public, or provide the defendant needed training; and (3) the applicable sentencing range set forth in guidelines promulgated by the United States Sentencing Commission (established in Title II of this Act).

Authorizes a court to order a person found guilty of deceptive practices to notify interested persons of the conviction. Empowers a court to order a guilty defendant to make restitution to a victim of the offense.

Authorizes imposition of a term of probation, unless such sentence is specifically prohibited, with respect to all but the most serious class of felonies. Lists permissible terms of probation for each category of offenses. Requires as a mandatory condition of probation that a defendant not commit another crime.

Enumerates discretionary conditions of probation. Sets forth provisions relative to the

running of a term of probation and revocation of probation.

Authorizes imposition of a fine upon any person found guilty of an offense. Sets limits on the amount of a fine for each category of offenses. Prescribes higher maximums for organization than for individual defendants. Permits as an alternative maximum fine twice the gain derived or twice the loss caused by an offense.

Directs the court, in determining the amount of a fine and the method and time for its payment to consider the defendant's financial status. Prohibits the court from imposing a term of imprisonment as an alternative to payment of a fine. Details procedures for the modification or remission of a fine.

Authorizes the imposition of a term of imprisonment upon an individual found guilty of an offense. Specifies maximum terms for each category of offense. Empowers a court to designate a term of parole ineligibility up to nine-tenths of the sentence imposed. Lists factors to be considered in setting or modifying a term of imprisonment or parole ineligibility. Prescribes guidelines relative to concurrent and consecutive terms.

Designates which federal agency is to have primary responsibility for detecting and investigating the commission of each criminal violation under this Act.

(See CODE, page 4)



(CODE, from page 3)

Defines the law enforcement authority, including authority to arrest and execute process, of certain officials and employees of the following departments and agencies: (1) Federal Bureau of Investigation, (2) Drug Enforcement Administration, (3) Department of the Treasury, (4) United States Postal Service, (5) United States Marshal Service, (6) United States Probation Service, (7) Bureau of Prisons, (8) Immigration and Naturalization Service, and (9) Department of the Interior.

Revises provisions relative to interception of communications for law enforcement purposes. Permits interception of communications with respect to certain crimes not presently covered, such as criminal solicitation of specified offenses and aircraft hijacking. Restricts interception of communications without a court order in emergency situations to offenses involving treason, sabotage, espionage, or a risk of death, rather than to conspiracies involving national security or organized crime.

Amends provisions regarding extradition. Repeals provisions relating to extradition of persons fleeing the United States to countries under the control of the United States and to extradition of persons fleeing to the United States from such countries. Prohibits extradition of a person convicted in absentia unless assurances are made that proceedings will be reopened or unless the person fled after having been present when his trial commenced.

Details new procedures for the arrest and detention of persons who have committed extraditable offenses.

States that extraditability shall be found in an appropriate hearing only upon proof of certain facts, including (1) an applicable treaty covering the offense involved is in effect, (2) the pending criminal

charge against the person sought, or the prosecution for the offense of which he was convicted, was brought within any applicable statute of limitations, and (3) probable cause that the person sought and the person arrested are identical and that the person sought has committed or has been convicted of the alleged offense. Permits hearsay to be admitted in extradition hearings. Prescribes standards and procedures for waiver of extradition hearings and for appeal of a judgment issued in such a hearing.

Expands the criminal jurisdiction of United States magistrates to authorize trial by such officers of all misdemeanors. Restricts the election of a defendant to be tried by a district court rather than by a magistrate to misdemeanors punishable by more than six months imprisonment.

Permits federal prosecution of a juvenile charged with a federal felony if such prosecution is in the interest of justice, even though state jurisdiction exists and the appropriate state has adequate juvenile services. Specifies guidelines for (1) surrender to state authorities of persons age 18-21 who are arrested and charged with a federal offense and (2) pretrial release of juveniles. Increases the time which a juvenile may be detained prior to trial.

Authorizes, where it is in the interest of justice, prosecution as an adult of a juvenile under 16 years of age who is charged with murder.

Allows a victim of juvenile delinquency to obtain information regarding final disposition of any action taken as a result of the incident.

Revises procedures for determining mental competency to stand trial. Sets limits on the time a person deemed incompetent may be confined. Requires that a person deemed incompetent be released if, after appropriate time limits he still is incompetent to stand trial, has no prospect of becoming competent, but does not, by clear and convincing

evidence, pose a substantial risk to others of serious bodily or property damage.

Sets the same standard for hospitalization of person acquitted by reason of insanity and of mentally ill prisoners due for release as that for person incompetent to stand trial who have no prospect to attain capacity to do so in the foreseeable future.

Directs that psychiatric examinations required under this Act be conducted by at least two psychiatrists or clinical psychologists. Lists guidelines for psychiatric and hospital reports.

Permits, unless contrary to plea agreement or consistent with United States Sentencing Commission policy statements, a defendant to appeal a sentence greater than the maximum allowed under applicable Sentencing Commission guidelines and the Government to appeal a sentence less than the applicable minimum. Sets forth standards and procedures for appellate court review. Details special probation and execution procedures for first offense drug possessors.

Designates as eligible for parole any prisoner (1) who is sentenced to a term of six months or longer and (2) who has served the term of parole eligibility imposed by the sentencing court or six months, whichever occurs later.

Directs the United States Parole Commission to grant parole to an eligible prisoner if, having regard for guidelines and pertinent policy statements of the United States Sentencing Commission concerning parole, it determines (1) release at that time is consistent with the factors that led to imposition of the particular sentence, (2) there is no undue risk of failure to conform to the conditions of parole warranted under the circumstances, and (3) release in light of the prisoner's conduct during incarceration, would not have a substantially adverse effect on institutional discipline.

(See CODE, page 1)



CODE, from page 4)

Directs the Bureau of Prisons to conduct a complete study of every prisoner who is due to become eligible for parole. Entitles a prisoner who is eligible for parole to an interview in accordance with specified procedures.

Sets forth ranges for terms of parole according to categories of offense. Directs the Parole Commission to set conditions of parole, taking into consideration any guidelines or statements of the Sentencing Commission, the circumstances of the offense, the history of the parolee, the need to protect the public from further crimes of the parolee, and the need of the parolee for education, medical, and other services. Requires as a mandatory condition that the parolee not commit another crime. Details procedures for revocation of parole and appeal of Parole Commission decisions.

Increases the number of crimes with respect to which proceeds, instrumentalities, and other property may be forfeited. Describes forfeiture procedures. Empowers the Attorney General to bring civil actions to prevent and restrain racketeering offenses and to enjoin a practice that constitutes or could constitute a fraudulent scheme or consumer fraud.

Establishes in the Treasury Department a Victim Compensation Fund from which victims of federal crimes against the person or their surviving dependents may be compensated upon filing a claim with the United States Victim Compensation Board.

## **Title II: Miscellaneous Amendments**

Reenacts specified sections of the Organized Crime Control Act of 1970 and of the Gun Control Act of 1968 which are not included in Title 18 of the United States Code as recodified by this

Act as parts of those respective Acts. Provides for punishment of persons violating those sections through the sentencing provisions of Title 18.

Adds a new rule on burdens of proof to the Federal Rules of Criminal Procedure which sets forth standards relative to (1) proof of offenses, defenses, affirmative defenses, and jurisdiction and (2) presumptions and prima facie evidence.

Establishes a United States Sentencing Commission as an independent Commission in the Judicial Branch. Designates as the primary duty of the Commission promulgation of (1) guidelines setting forth ranges of sentences to be used by sentencing courts in accordance with the provisions of this Act and (2) general policy statements regarding application of the guidelines and other aspects on sentencing. Directs the Commission to develop, taking into consideration enumerated factors, categories of offenses and defendants for use in creating its sentencing guidelines.

Reenacts certain provisions deleted from Title 18 by this Act regarding gathering and disclosing national defense or classified information as parts of the Subversive Activities Control Act of 1950 and the Espionage and Sabotage Act of 1954. Retains the criminal penalties specified in those sections and stipulates that sections of Title I on culpable states of mind shall not apply to such provisions.

## **Title III: General Provisions**

States that any holding that a provision or application of a provision of this Act is invalid shall not affect the validity of other provisions or applications of a provision.

Sets as the effective date of this Act the first day of the calendar month first beginning 24 months after enactment, with the excep-

tion of sections establishing the United States Sentencing Commission which are to take effect upon enactment.



## **CONFERENCE OF CHIEF JUSTICES HELD IN MINNEAPOLIS**

From July 31 through August 3, the Conference of Chief Justices held its annual meeting in Minneapolis.

Chief Justice Robert J. Sheran, the conference host, and Attorney General Warren Robert Spannaus welcomed the conferees. Chairman of the conference this year was Chief Justice C. William O'Neill of Ohio.

Chief Justice James Duke Cameron, (Arizona), moderated a panel which first heard a discussion on discipline of judges and attorneys. After reviewing historical methods of discipline and removal from the bench, Chief Justice Cameron described the California procedures for removal, which are less cumbersome than impeachment, and recommended the California system as worthy of emulation.

It was Chief Justice Cameron's view that the establishment of a body to receive citizen complaints concerning intemperate judicial activities is essential. It provides unencumbered machinery to handle grievances while at the same time assuring the subject of the complaint an opportunity to make a substantive appeal.

The second agenda item was judicial-legislative relationships. Chief Justice Frank R. Kenison of New Hampshire moderated a four-member panel discussion. It was the consensus of the panel that the judiciary must be willing to



provide all the data the legislative branch feels it needs in order to effect positive changes in the judicial system. Chief Justice Joe W. Sanders (Louisiana) warned against the practice of issuing annual reports laden with incomprehensible statistics that do not narrowly define the problems of the judiciary. Chief Justice Bruce F. Beilfuss, Sr. (Wisconsin) noted that the judicial branch of government has often been "asleep at the switch" when legislation crucial to court operation is being generated.

The third major area of discussion was on state-federal relationships. Chief Justice Edward E. Pringle (Colorado), moderator, observed that state court systems must receive federal help but that state courts should receive federal money directly and independently decide how to spend it. Daniel J. Meador, Assistant Attorney General of the United States, spoke on the allocation of judicial business between state and federal courts. Mr. Meador's new office has recently begun a two-year program to examine judicial efficiency in both the state and federal courts. He called for removal of diversity jurisdiction in the federal courts in certain cases and said that the state courts are a far better forum for these cases.

Former Alabama Chief Justice Howell T. Heflin advocated establishing orientation programs for new state legislators on the subject of separation of powers among the three branches of government. He stated that the programs are necessary because today there are fewer lawyers serving as state legislators than in the past. Kenneth R. Feinberg, Staff Counsel, U.S. Senate Committee on the Judiciary, spoke on the future of federal efforts to aid state courts. He told of the restructuring of LEAA in recent months, and alerted the conferees to a forthcoming bill to

be introduced by Senator Edward Kennedy to further reorganize LEAA and to provide considerably more incentive to states to apply federal funds to state court problems.

Professor Maurice Rosenberg of Columbia University School of Law spoke on the implementation of the Pound Conference Task Force recommendations. Twenty-six recommendations resulted from the Pound Conference, and Professor Rosenberg singled out for discussion those he felt the conferees were best able to implement.

Highlighting the conference was an address by U.S. Attorney General Griffin B. Bell. One of the prime objectives when he took office was a careful examination of the processes of justice in this country. A number of innovations will be attempted in the years ahead, including the commencement of three neighborhood justice centers this fall—one each in St. Louis, Los Angeles, and Kansas City.

The conference adopted a resolution in which they expressed their willingness to provide relief to the federal court system by adequately reviewing state court criminal proceedings to assure that federally defined constitutional rights have been protected, increasing their participation in federal question cases and assuming all or part of the diversity jurisdiction of the federal courts.

#### FJC PUBLISHES CAMP REPORT

The Center has concluded its three-year study of the Second Circuit's innovative appellate case processing procedures with the publication of *An Evaluation of the Civil Appeals Management Plan: An Experiment in Judicial Administration*.

The management plan, now operating in the circuit, has two unique features. The first is the use of scheduling orders that the court issues in all civil appeals to notify counsel about the deadlines for critical events in the course of an appeal. The appeal may be dismissed for failure to comply with this order.

The second feature of the plan is the use of preargument conferences supervised by a senior staff attorney in a selected number of circuit cases. These conferences are authorized under the Federal Rules of Appellate Procedure, but this is the first time that the conference procedure has been implemented systematically.

CAMP began in 1974 with initial financial support from the Center to defray personnel expenses and research support to develop the rigorous evaluation of the process. The evaluation was conducted as a controlled experiment in which appeals deemed eligible for CAMP procedures were randomly assigned, over a period of one year, to an experimental group or a control group.

Cases in the experimental group received the procedures designated by the staff attorney, while cases in the control group proceeded from notice of filing through disposition with none of the CAMP procedures. This research approach provided the best assurance that the two groups were alike in all respects save one: the CAMP procedures. A set of goals was established and measures of them were taken in each group.

A total of 302 cases filed in the appeals court from October 1974 to October 1975 were processed as part of the evaluation. The last of these cases was terminated by the court in March 1977.



## ABA RESOLUTIONS AFFECTING FEDERAL JUDICIARY

During the ABA Annual Meeting held in Chicago this month the House of Delegates approved several resolutions relating to the Federal Judiciary. These resolutions are available in the Information Services Office at the Center. Subjects covered were:

**Judges:** Approved a resolution supporting merit selection of federal judges and commending President Carter for the establishment of the United States Circuit Judge Nominating Commission; also resolved to commend United States Senators for applying this concept in their nominations of United States district judges.

**Magistrates:** Approved a resolution "to improve access to the federal courts by enlarging the civil and criminal jurisdiction of the United States magistrates."

**Diversity Jurisdiction:** Postponed to midyear meeting resolution supporting the adoption by Congress of legislation which would withdraw diversity jurisdiction of federal courts for litigation in which a plaintiff is a citizen of the state in which the action is brought; also approves legislation to raise the jurisdictional minimum amount in diversity cases to \$25,000.

**Grand Jury Legislation:** Approved the endorsement of legislation which would revise federal grand jury procedures.

**Class Actions:** Disapproved a resolution submitted by the National Conference of Commissioners on Uniform State Laws. The resolution asked that the House of Delegates approve their Uniform Class Actions Act.

**Customs Court:** Approved a resolution calling for an amendment to 28 USC 2635 which relates to the burden of proof in Customs Court cases.



(CAMP, from page 6)

The evaluation of the plan is based on case information and judge and attorney surveys. The report concludes that, while CAMP may have improved the quality of appellate litigation and may have helped expedite the appellate process, the magnitude of these effects was modest. The evidence in each of the established measures of success pointed favorably to the plan, but the differences in the two groups was not strong enough to attribute cause to the CAMP procedures.



## SENATE PASSES FINANCIAL DISCLOSURE BILL

The Senate July 28th passed S. 555, a proposed Public Officials Integrity Act of 1977, that provides for appointment of an independent temporary special prosecutor, and would establish an Office of Congressional Legal Counsel, and an Office of Government Ethics in the Civil Service Commission.

Title III of this bill imposes financial disclosure requirements *inter alia* on each justice, judge, or other adjudicatory official of the judicial branch, as well as other employees at or above the minimum rate for GS-16's.

Such reports are due within 30 days of assuming the position and on or before May 15th of each succeeding year, and shall report earned income (exclusive of honoraria) received during such calendar year which exceeds \$100 in amount or value; identity and amount of honoraria; the identity of each source of income (other than earned income) which exceeds \$100 in amount or value and an indication of amount category (e.g. "not more than \$1,000"; "greater than \$1,000, but not more than \$2,500," etc.), it falls into; the identity, description and value of gifts of transportation, lodging, food, or entertainment aggregating \$250 or more provided by any one source other than a relative as well as other data concerning gifts; data by value category concerning real and personal property owned above \$1,000; data concerning positions held and contracts or agreements relating to employment; the source but not the amount of earned income (over \$1,000) and gifts (over \$100) received by a spouse or minor dependent, and with respect to adult dependents only gifts of over \$500; and with respect to other items relating to spouses and dependents the requirements are also more limited.

Income from trusts must be included, except that qualified blind trusts are permitted for persons other than a judge or justice. Such reports are filed by each justice, judge, adjudicatory official, officer, or employee of the judicial branch with a "supervisory ethics office" which is defined for the Judiciary (and Presidential nominees for judicial appointment) as "a committee designated by the Judicial Conference of the United States."

In addition, each justice or judge or other adjudicatory official of the judicial branch shall file a copy of such report as a public document with the clerk of the court on which he sits. The



Committee of the Judicial Conference pursuant to Section 305(a) of the bill and each clerk of court shall make such report available to the public within 15 days after receipt of such report and provide a copy of such report to any person upon a written request, except that it is unlawful for a person to inspect or obtain a report for any unlawful purpose, for any commercial purpose, for credit rating purposes, and for use for solicitation of money under pain of a penalty not to exceed \$5,000.

The Judicial Conference Committee will conduct on a random basis a sufficient number of audits to monitor the accuracy and completeness of such reports, and otherwise supervise the program, reporting at least annually to the Congress on the activities of the Judicial Conference including information on the effectiveness of the Judicial Branch system for the prevention of conflicts of interest, and recommendations for any changes in the law.

The bill also provides for an independent advisory commission, the National Advisory Commission on Ethics in Government, to be composed of nine members, two of whom would be appointed by the Chief Justice of the United States, who would conduct a review of the effectiveness of the Act in controlling conflicts of interest in all branches of government.



#### DISTRICT COURT REPORTS IN FINAL PREPARATION

The Federal Judicial Center is concluding its district court studies project by publishing several reports to appear in the coming months.

The project has been an effort over several years to determine the practices and procedures of district courts that lead to particularly speedy, effective, and efficient disposition of cases. Reports will appear summarizing

all aspects of the project, focusing especially on several specific topics on the civil side.

A comprehensive report will appear about September 25. Entitled *Case Management and Court Management in U.S. District Courts*, this report is based on the *Interim Report* published in June 1976. It contains a great deal of new information gathered in recent work. Preliminary findings of the *Interim Report* have been tested using extensive data gathered from civil dockets of ten courts.

Several major findings of earlier work have been confirmed. These include:

- The fastest courts have an automatic procedure that assures for every civil case that each stage is strictly monitored, the case is always "on track," and a prompt trial is provided if needed.
- Court procedures are designed to minimize the burden each case places on the judge through the early stages. Supporting personnel are used extensively for docket control and preliminary proceedings.
- Judges of the most efficient courts visited do not devote a great deal of time to settlement. They may raise the settlement issue briefly at an early stage (or have a magistrate do so), and they may conduct extensive settlement negotiations in a few selected cases at later stages. Otherwise they have little role.
- Relatively few written opinions are prepared for publication.
- All proceedings that do not specifically require a confidential atmosphere are held in open court.

Study of the civil dockets indicated that a great deal of time a typical civil case is pending is unused, suggesting that judicial case management could be tightened considerably in most

places. For example, even in the fastest court the original complaint was answered after thirty-eight days although the Federal Rules of Civil Procedure permit only twenty days after service.

In one court the typical period was sixty-six days, despite monitoring by the court. A related finding is that service delays are a small part of the problem of delayed answers, though large service delays appear in a few cases in some courts: in one court 10% of pleadings were not served until fifty-seven days or more after the were filed.

In the discovery area the project determined that discovery often begins late and proceeds only sporadically over a long period of time. In several courts the first discovery did not begin typically until three or four months after filing.

Often, once discovery begins little or nothing happens over a very long period of time. The courts with the tightest controls showed much faster discovery responses, much tighter discovery activity generally, and yet had at least as large a volume of discovery activity as the courts with less strict controls.

Several interesting findings emerged in other areas as well. Several courts have been visited recently that hold court in several places. Some of these, however, have centralized their operations much more than others have: judges and supporting personnel live in only one or two cities, and serve other locations by making brief trips to visit them. This approach appears to be especially effective.

The courts varied widely in the ways they used their supporting personnel. Some districts have successfully delegated many time-consuming tasks from the judges to magistrates. Others suffer because magistrates' duties are very limited. In more than one instance, courts employ magistrates in whom they have little



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

## Congressional Action

**Bankruptcy.** H.R. 8200, to establish a uniform law on the subject of bankruptcies was ordered reported July 19 by the House Committee on the Judiciary.

**Committee Actions.** The Senate Judiciary Committee filed a report S. 1613, to improve access to the federal courts by enlarging the civil and criminal jurisdiction of United States magistrates (July 19, Senate Report 95-344). The bill passed the Senate on July 22. The House Committee on Interstate and Foreign Commerce has reported out (H. Rep. 95-339) for major action the Federal Trade Commission Amendments bill (H.R. 3816) which provides for the bringing of civil actions by consumers, partnerships, and corporations injured by certain unfair or deceptive acts or practices in state courts and in federal court where the amount in controversy exceeds \$25,000 in the aggregate. It requires the court, in class actions filed under the Act, to order notice to be given to the members of the class (1) publication by any communications medium, (2) posting at a location frequented by class

members, or (3) individual notice to each class member who can be identified through reasonable effort.

It authorizes the Commission to institute a civil action against any person, partnership or corporation that violates a cease and desist order applicable to such person, partnership or corporation.

The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice continued oversight hearings on the state of the judiciary and access to justice on July 20 and 21.

Additional hearings were held on the Federal Criminal Diversion Act, S. 1819, on July 11 and 15.

## Bills Introduced

H.R. 8360, to amend Chapter 5 of Title 5, United States Code (commonly known as the Administrative Procedure Act), to permit awards of reasonable attorneys fees and other expenses for public participation in federal agency proceedings. This bill was introduced by Congressman Peter W. Rodino and referred to the Committee on the Judiciary.

S. 1487, to restore effective enforcement of the antitrust laws, has been introduced by Senator Edward Kennedy and referred to the Committee on the Judiciary. Congressman Peter W. Rodino has introduced a companion bill, H.R. 8359, pending in the House Judiciary Committee. The Senate Subcommittee on Antitrust and Monopolies began hearings on S. 1847 on July 21 and 22. The legislation would overturn the Supreme Court decision in *Illinois Brick Co. v. Illinois*, which held that only those parties that dealt directly with the antitrust violator could recover damages. The bill would authorize consumers and others further down the chain to recover the damages they have sustained.

H.R. 8263, to amend Section 541 of Title 28 of the United States Code, to change the term of

office and the manner of appointment and removal of U.S. attorneys and to repeal Section 546 (relating to temporary appointments to vacancies by the courts) of such title introduced by Congressman Robert F. Drinan and pending in the House Judiciary Committee.

H.R. 8220, by Congressman George E. Danielson, to amend Section 1821 of Title 28, United States Code, relating to per diem and mileage expenses for witnesses in the United States courts.

H.R. 8253, to amend Title 28 of the United States Code to change the procedure for the removal of certain state criminal cases in the federal courts, introduced by Congressman James R. Mann.

All of the above bills are pending in the Committee on the Judiciary.

## Enactments

Public Law 95-66 (signed July 11, 1977) relates to the denial of 1977 comparability pay adjustment in the case of certain positions. The public law precludes the October comparability adjustment which would otherwise take effect with respect to justices, judges, commissioners and bankruptcy referees. The Act applies only to the October 1977 comparability adjustment and does not affect future adjustments. The rationale is to prevent the occurrence of two pay raises in the calendar year.

**Black Lung Benefits.** S. 1538, proposing reform in the administration of the black lung benefits program, has been reported with amendments by the Committee on Finance (Senate Report 95-336) on July 12, 1977. S. 1538 was debated on the Senate floor on July 21. However, due to a tax provision in the bill, a Senate vote will be delayed pending House action.



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Justice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U. S. Courts



## go2fjc calendar

Sept. 7-9 Advanced Management Workshop for Supervising U.S. Probation Officers, San Antonio, TX

Sept. 8-10 Second Circuit Judicial Conference, Buck Hill Falls, PA

Sept. 12 Ad Hoc Committee on Bankruptcy Legislation, Washington, DC

Sept. 12-16 Orientation Seminar for U.S. Probation Officers, Washington, DC

Sept. 15-16 Judicial Conference of the United States, Washington, DC

Sept. 15-16 Management Training for Supervisors, Detroit, MI

Sept. 18-21 Third Circuit Judicial Conference, Tantiment, PA

## PERSONNEL

### ELEVATION:

Charles M. Allen, Chief Judge, U.S. District Court, W.D. Kentucky, July 25

### NOMINATION:

Harry H. MacLaughlin, U.S. District Judge, D. Minn. Aug. 4

### CONFIRMATIONS:

Harold L. Murphy, U.S. District Judge, N.D. Georgia, July 28

T.F. Gilroy Daly, U.S. District Judge, D. Connecticut, Aug. 5

Earl E. Veron, U.S. District Judge, W.D. Louisiana, Aug. 4

### APPOINTMENT:

Russell G. Clark, U.S. District Judge, W.D. Missouri, July 22



(STUDY from pg. 8)

confidence, although the overall quality of magistrates is generally recognized to be outstanding.

The tasks of the clerks' offices vary widely also. Clerks of court who act in a comprehensive role as court administrators seem able to strengthen almost every aspect of the court operation. Especially valuable also is the effective system observed in several courts to train and supervise courtroom deputy clerks in case management.

Overall, the sum of observation and data in the project indicates that the benefits from effective case management are great. A district whose docket is intelligently supervised and in which the judges do their work promptly can control many of the ills widely thought to be characteristic of litigation in general, even endemic to it. Activist judges, using the discretion at their command, are able to be highly effective in controlling delay, litigation cost, abuse, and the administrative slips sometimes said to be characteristic of court systems.

Detailed reports are now in preparation concerning aspects of the civil litigative process. Two of these, *Judicial Controls and the Civil Litigative Process: Discovery*, and *Judicial Controls and the Civil Litigative Process: Motions*, will appear in the early fall. Subsequent reports will treat pleadings, disposition types, and other topics.



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## Bulletin of the Federal Courts

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SEPTEMBER 1977

## DEFENDER OFFICES EXPANDING

July 4, 1977, saw the entrance on duty of two new Federal Public Defenders, R. Jackson Smith, Southern District of Georgia, and Pierre Vivoni, District of Puerto Rico, bringing the total number of Federal Public Defender Offices to 56. Attorneys from these offices, along with the 8 Community Defender Offices, now provide representation under the Criminal Justice Act in 35 of the 94 federal district courts. Beginning with the first Federal Defender Office in Arizona on February 11, 1971, followed closely by the Northern District of California, the Federal Defenders have established themselves as professional and respected advocates, providing valuable services, not only to their clients, but also to the courts and the bar. In fiscal year 1976, Federal Defenders represented 8,324 persons, approximately 9% of all persons provided counsel under the Act. Eight percent of the criminal cases which they terminated in that year went to trial, and of these 22.5% resulted in a finding of not guilty or a judgment of acquittal.

In addition to providing a high quality of representation, many Federal Defenders have taken an active and leading part in the development and presentation of continuing legal education programs for both their own staffs and CJA attorneys within their districts and circuits. Federal Public and

(See DEFENDERS, page 2)

### USE OF MAGISTRATES IN CIVIL PRETRIAL PROCEEDINGS INCREASING

Nearly half the district courts now delegate a substantial and regular volume of civil pretrial work to their magistrates, while one-fourth of the courts assign pretrial duties and motions practice on an occasional basis.

For the year ending June 30, 1977 magistrates conducted 22,787 pretrial conferences in civil cases, up 30 percent from the 17,559 conducted during the preceding year.

Under the 1976 jurisdictional amendments to the Magistrates Act, magistrates may hear and determine nondispositive pretrial motions and hear and make recommendations to a judge on dispositive motions.

During the year just ended magistrates nationally ruled or reported on 17,687 civil motions in 64 district courts, up from 9,583 motions in 57 courts during the preceding year.

While the use of magistrates to handle the initial and pretrial stages of civil litigation has indeed been expanding nationally in furtherance of the legislative intent, local practices and individual preferences have produced a variety of approaches to the use of magistrates.

In some courts all pretrial conferences and motions are automatically referred to the magistrates

by the clerk of court under provision of local rule or order.

In other districts assignments are made by individual judges to magistrates on a case-by-case basis. In some districts the use of magistrates is determined largely by the nature of the cases filed.

All civil rights cases and Social Security appeals, for example, may be referred to a magistrate by the clerk at the outset of the litigation for all purposes, including pretrial conferences, motions, and evidentiary hearings, while other types of litigation may be referred selectively by minute order.

It has been observed generally that pretrial procedures, techniques, and approaches of district judges vary according to the particular needs of each court, each judge, and each type of case, although the ultimate objectives of case control, complete discovery, exploration of settlement, trial preparation, and education of the court remain constant.

Likewise, the attitude of judges towards the effective utilization of magistrates presently varies from court to court and within a given court.

Such differences give rise to variations in the manner in which magistrates are called upon to conduct pretrial proceedings for their courts. Nevertheless, three identifiable types of approaches to using magistrates in civil cases have

(See MAGISTRATES, page 2)



(MAGISTRATES, from page 1)

emerged: individual case assignment; complete delegation of all duties; and complete delegation of some, but not all duties.

In some courts all civil cases are simultaneously assigned to a judge and to a magistrate as soon as they are filed. The magistrate conducts all pretrial proceedings and rules on all, or most, motions. He then files the pretrial order with the judge, who calendars the case and hears any outstanding motions and reviews on assignment of error any rulings of the magistrate. Under this procedure a judge would not normally see a civil case until after all pretrial proceedings are complete and the case is ready for trial.

Some courts have opted for another approach, an extensive, but selective use of the magistrates. Generally all cases, or at least all cases from certain judges, will be referred to a magistrate for a preliminary or initial conference a specified number of days after joinder of issue.

At the initial conference the magistrate: (1) takes control of the case for the judge; (2) conducts a general case discussion with the attorneys, including exploration of settlement possibilities; (3) resolves problems relating to jurisdiction, pleadings, and procedural motions; and (4) sets schedules and arrangements for the exchange of discovery and for further pretrial proceedings. The magistrate will thereafter conduct such status conferences, follow-up conferences, or settlement conferences as may be appropriate in the case.

If the case does not settle before the magistrate, the final pretrial conference is scheduled for those cases which are to be tried. Some judges also assign the final conference to the magistrate, but many judges choose to conduct this proceeding personally, since it serves to familiarize them with the case they are about to try. This is a matter of personal preference and appears to vary even among judges within the same court.

In one district, by local rule, all civil cases are referred automatically to a magistrate for an initial pretrial conference only, while FELA and diversity cases are referred for all pretrial proceedings including final pretrial.

Last March the Judicial Conference's Committee on the Administration of the Federal Magistrates System urged each district court to review its existing rules to ensure that they comply fully with the 1976 jurisdictional amendments to the Magistrates Act. The Committee suggested consideration of the following model local rule of court:

**"All civil cases [or specified categories of civil cases only] shall be assigned by the clerk of court when filed to a magistrate, who**

(DEFENDERS, from page 1)

Community Defender personnel also benefit from seminars and continuing educational programs offered by the Federal Judicial Center. During fiscal year 1977, programs were conducted for Federal Public Defenders, Community Defenders, Assistant Defenders and investigative personnel. Training is tailored to the experience level of the particular group. A proposal on the part of a Community Defender to establish minimum training standards is currently under consideration by the Federal Judicial Center.

At the request of the district courts, some Defenders have also taken on the task of administering the private attorney panel, to include, among other things, locating attorneys available for appointment in particular cases, assuring rotation in membership, and assisting with the preparation and accuracy of attorneys' vouchers prior to their submission to the court. This support relieves both the court and the clerk's office of many of the added burdens imposed by the operation of the Criminal Justice Act.

Defenders, having acquired a national reputation for their

shall conduct an initial pretrial conference [or such pretrial conferences as are necessary] and shall hear and determine all pretrial procedural and discovery motions, in accordance with rule 2, *supra*. Where designated by judge of the court, the magistrate may conduct additional pretrial conferences and hear the motion and perform the duties set forth in rules 3 and 4, *supra*. In conducting such proceedings the magistrate shall conform to the general procedural rules of this court and the instructions of the judge to whom a case is assigned."

Copies of the full set of model rules and supporting documents are available from the Information Service of the Federal Judicial Center or the Magistrates Division of the Administrative Office.

expertise in the criminal law, are often invited to testify at Congressional hearings, take part in national programs, serve on various criminal law committees and otherwise provide advice and guidance on improvements in the criminal law field.

There remain only 17 districts which presently have no Federal Defender Program but meet the 200 appointments per year statutory requirement for the establishment of a single-district office. Three of these districts are currently in various stages of forming offices which should be in operation by January 1978. And for the first time, two adjacent districts have decided to merge their number of appointments in order to qualify under the Act and are in the early stages of establishing a Defender office. The need to appoint counsel with minimum delay in order to comply with the time provisions of the Speedy Trial Act and the courts' desire to reduce the administrative burden involved in the processing of private attorney vouchers have undoubtedly provided some of the impetus for the creation of the new defender offices. More important, however, is the desire of

(See DEFENDERS, page 1)





Chief Judge Seitz

### CHIEF JUDGE SEITZ PRESENTS STATE OF CIRCUIT ADDRESS

During the past year the Third Circuit was able to terminate almost all of its record number of pending cases through assistance of senior judges, visiting judges, by district judges sitting on circuit panels, and in the district courts by increased use of magistrates.

These were some of the major themes which Chief Judge Collins J. Seitz touched upon in his State of the Circuit Address as the Third Circuit's Annual Judicial Conference opened this month.

Here is a summary of some of the other major topics the Chief Judge focused upon.

In the District of the Virgin Islands, the Legislature has created a Territorial Court which will be able to handle many matters previously referred to the Federal Court such as all probate cases. As a result, this Court will have more time to handle federal matters.

Most of the District Courts of the Circuit are complying with the time requirements of the Speedy Trial Act and expect to be ahead of schedule in meeting the final

DEFENDERS, from page 2)

courts to improve and ensure the experience and competence of the federal bar, with a resultant high quality of representation. The widespread reputation of the Federal Defenders as skilled advocates, combined with their availability, dependability, and service, have been responsible for the continuing interest and growth in the Federal Defender Program.

time requirements of the Act. However, in some instances criminal cases are being processed to the detriment of civil dispositions.

In some districts bankruptcy filings are down after a long upward trend. The officials of these courts deserve special praise for their excellent service in processing the heavy bankruptcy caseload in recent years.

The court reporter problem is still with us but the District of New Jersey has provided regulations for the reporters stationed there. In addition, the Circuit has been working to regularize the situation when a reporter is needed on an emergency basis.

In the Eastern District of Pennsylvania they have experienced difficulties in making timely service of process because of delays in the Marshal's Office. The District has resorted to alternative ways of service and monitoring the service given by the Marshal's Office which, the Chief Judge noted, stems from inadequate staffing in the Marshal's Office. The problem is national in scope.

While the district judges deserve congratulations for dealing with a demanding caseload, there is increasing concern over the length of time certain judges are holding cases under advisement. This problem can be worked out at the district court level under the leadership of the chief judges of each court.

The Court of Appeals during the past year experienced record filings of 1,737—the largest in the history of the Court. Terminations were 1,606 or 131 less than the filings. As a result, the Court will increase its weekly sittings to thirty weeks and each active judge will be expected to hear about 260 appeals during the coming year—a staggering load.

Chief Judge Seitz said he was especially proud of the Satellite Library Program with Satellite Libraries in Pittsburgh, Newark and Wilmington and "Mini-Satellites" in Wilkes-Barre and Camden. These libraries serve both district and circuit court judges.



Chief Judge Kaufman

### CHIEF JUDGE KAUFMAN ADDRESSES SECOND CIRCUIT CONFERENCE

In his opening remarks to the Judicial Conference, Chief Judge Irving R. Kaufman recommended the creation of a "Voluntary Masters' Project" consisting of a panel of lawyers who are capable of supervising pretrial proceedings.

This group of lawyers could relieve overworked district judges and magistrates who cannot keep abreast of these proceedings. The primary objective of the Master would be to mediate and settle the controversy but if unsuccessful, he would prepare a written statement of the issues to be litigated.

Here is a summary of some of the key issues which the Chief Judge discussed.

Our judicial system cannot long endure such a continued onslaught of cases without either reforming or facing disaster. One positive legislative action that has taken place recently is the preparation of judicial impact statements.

Merit selection of circuit judges and the decision of the Administration to retain the able U.S. Attorneys until the end of their terms are moves for which the Carter Administration should be commended.

The recommendations of the Second Circuit's Sentencing Committee calling for sentencing benchmarks and limited review of sentences have been embodied in legislation supported by the Administration and introduced by

(See KAUFMAN, page 4)



(KAUFMAN,  
from page 3)

Senators Edward Kennedy and John McClellan.

The Advisory Committee on Qualifications has now turned its attention to the problem of incompetence among mature lawyers and has suggested a limited peer review system.

For the fourth year in succession the Court of Appeals has terminated more cases than were filed during the fiscal year.

The District Courts cleared their criminal calendars terminating more criminal cases than were filed.

Moreover, these Courts have already implemented the time limits set by the Speedy Trial Act, fully two years before the statutory mandate becomes effective. However, adherence to the requirements of the Speedy Trial Act by these Courts has seriously undermined the efforts of these Courts to cope with their massive civil dockets.

The Circuit must work to formulate a reform program that will help to open the Courts to the serious litigant. For example, ways must be found to limit seemingly endless discovery and we will take a hard look at document discovery; it is critical that our discovery procedures be restudied and redesigned, if necessary.

Cost and delay can be minimized if lawsuits are shaped at an early stage. Streamlining litigation is vital if we are to deal with the trend towards large, complex cases. It may be true, as the Attorney General has suggested, that some controversies are simply too massive for any judicial resolution.

The Circuit will consider how to make the presentation of difficult scientific and technical issues more satisfactory and less expensive. One possible alternative to consider is the creation of judicial resource services which would be responsible for developing and maintaining technical expertise on commonly litigated questions.

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#### HEARINGS HELD ON GRAND JURY BILL

Recently, further hearings were held before the Subcommittee on Immigration, Citizenship and International Law of the House Judiciary Committee on H.R. 94, the Grand Jury Reform Act of 1977, previously opposed in part by Judicial Conference witnesses. The testimony of Assistant Attorney General Civiletti of the Criminal Division, Department of Justice, may be summarized as follows:

**Recalcitrant Witnesses.** While the Department agrees that the period of confinement could be reduced from up to eighteen months to twelve months, it does not believe that the reduction to six months as provided by the bill is sufficient. The Department opposes the restriction on the contempt power that would exempt subsequent refusals to testify involving the same transaction.

**Witness Immunity.** The Department opposes the substitution of "transactional immunity"

for "use immunity." It also opposes the bill's proposal to require that a court be involved in addition to the Department of Justice in the decision that a grant of immunity would be in the public interest.

**Unauthorized Disclosure of Grand Jury Information.** The Department supports the concept of enacting legislation specifically to punish the unauthorized disclosure of grand jury information, but does not favor the fragmentation of the offense into various separate gradations depending upon intent.

**Excusing Witnesses Who Plan to Invoke the Fifth Amendment.** The Department opposes excusing a witness in advance who would invoke the Fifth Amendment on the basis that the witness would not know precise questions to be asked in advance, nor would the availability of the privilege be certain in advance of questioning.

**Successive Grand Jury Investigations.** The Department disfavors Section 6 of the bill which would preclude subsequent grand jury investigations if a grand jury "has failed to return an indictment" on the basis that a busy grand jury may not have reached the subject matter. The Department would not oppose a similar ban following a "no bill" vote.

**Duty of Prosecutor to Present Exculpatory Evidence.** The Department opposes a requirement that the prosecutor present all exculpatory material at the grand jury stage as contrary to the probable cause determination the grand jury is charged to make.

**Notifying Potential Targets of Investigations.** The Department believes unwise and unnecessary requirement that all potential targets of grand jury investigation be notified a reasonable time before seeking indictment to afford them opportunity to appear and testify. Reasons for the opposition include assertion that the practice would induce



suspects to flee, and encourage destruction of evidence, preparation of false alibis, or intimidation of witnesses. The Department would not oppose selective notification under rules established by the Department and is presently working on an alternate proposal to allow for notification and appearance in the exceptional case.

**Special Attorney for the Grand Jury.** The Department opposes the proposal for a non-executive branch prosecutor as unconstitutional, and because it would subject persons "to a myriad of disparate prosecutive standards without control."

**Counsel for Witnesses in the Grand Jury Room.** The Department opposes witnesses taking counsel into the grand jury room, as a severe impairment of the grand jury's fact-finding function, as creating delay, as giving opportunity for breaches of secrecy, as well as for other reasons.

**Notice of Rights in Grand Jury Subpoenas.** The Department does not oppose inclusion of notice in the subpoena of various rights such as right to counsel, privilege against self-incrimination and the subject matter of the investigation, but does oppose notifying the witness that his own conduct is under investigation, or the statutes violated.

**Rights of Grand Jury Witnesses.** The Department opposes transferring a grand jury proceeding or quashing a subpoena because of the hardship created by the location of the proceeding to the witness (as opposed to others).

**Grand Jury Recording.** The Department favors mandatory recording of all testimony in grand jury proceedings, but believes the bill goes too far in requiring all interchanges when no witness is present. The Department is studying the concept of developing patterned jury instructions to control grand jury proceedings, and has submitted pro-

posed changes in Rule 6(e) providing for recordation.

Further, the Department opposes those aspects of the bill that would repeal the Jencks Act, 18 U.S.C. § 3550, by allowing the defendant access to grand jury testimony. For a witness to get a copy of his own testimony, the Department would require the Government first be given a chance to show that such practice might impede the investigation or result in injury or death to any person or property.

**Preliminary Examination After Indictment.** The Department disfavors preliminary examinations after indictment is returned as a duplicative effort to test probable cause.

#### **PRETRIAL DIVERSION PROGRAM: A NATIONAL MODEL**

Pretrial Diversion has been used in the Western District of Kentucky for at least two decades. However, the program was expanded and accelerated in June, 1971.

The judges of the district authorized the chief probation officer to participate with the United States Attorney in a program to divert selected offenders to probation supervision and community resources without formal court appearances.

In November, 1976, the United States Probation Office in the Western District of Kentucky became a Pretrial Services Agency under the provisions of Title II of the Speedy Trial Act of 1974. This district became one of five additional Pretrial Services Agencies which will collect data along with the ten original Pretrial Services Demonstration Districts.

The philosophy of the Pretrial Diversion Program is that both the community and the individual would benefit from his diversion from the formal criminal process at an early stage.

The United States Attorney

begins the diversion process by referring potential pretrial diversion candidates to the probation officer. The referral to the probation officer is in letter form and includes the following:

- (1) Name, address, and birth date of offender;
- (2) Alleged violation;
- (3) Background of the offender (family, employment, etc.);
- (4) The law enforcement agency and name of agent assigned to the case;
- (5) Name of codefendants, if any;
- (6) Recommended length of supervision, usually 12 months.

The United States Attorney also sends a letter to the offender advising the following:

- That an alleged violation has been brought to the attention of the United States Attorney;
- That rather than being indicted, the offender is being considered for Pretrial Diversion;
- That he has been referred to the probation office to determine whether or not he is a suitable candidate for pretrial diversion;
- That he should report to the probation office within one week from receipt of the letter if he is interested in having his case diverted;
- The definition of Pretrial Diversion.

Within approximately two weeks the probation officer completes an investigation report and advises the United States Attorney whether or not the offender is suitable for pretrial diversion. Criteria for selecting the persons to be investigated for pretrial diversion would include the following:

- Any age group of offenders;
- Minor type offenses (postal

(See DIVERSION, page 6)



(DIVERSION, from page 5)

- theft, minor marijuana cases, etc.);
- Isolated offenses (not a series of offenses, even if each in itself is small);
- No prior felony convictions, nor an extensive prior record;
- Prospects of rehabilitation are favorable.

The selection criteria are flexible and have worked well since pretrial diversion is an informal process. However, if pretrial diversion becomes a part of the formal court process, explicit selection criteria will be necessary.

When the report is favorable, the United States Attorney will notify the offender to appear to execute a pretrial diversion agreement.

The agreement allows the offender a 12 month period of probation supervision. The offender may be represented by counsel at all times.

Upon signing the agreement, the offender becomes a pretrial diversion probationer and is supervised by a probation officer using the same guidelines as for parolees and probationers. The funding of the Pretrial Diversion Program is done through the regular budget of the Probation Office, with no outside contributions.

However, community resources are utilized when possible. In the Louisville area, diverse community resources are made available through a clearinghouse for ex-offenders which was established prior to the acceleration of the Pretrial Diversion Program in 1971.

Seven federal, state, county, and municipal agencies merged their employment programs into one agency. The clearinghouse now facilitates the delivery of such services as vocational counseling, job placement, train-

ing, bonding, emergency funding, medical treatment, and provisional work clothes.

At the termination of supervision, the probation officer completes a form certifying completion of the Pretrial Diversion Program, presenting it to the United States Attorney.

The cooperation among court-related agencies has allowed many cases to be diverted even prior to arrest. Diverting prosecution prior to arrest has posed some legal problems since the office of the Attorney General had requested that all pretrial diversion participants be fingerprinted. Diverting cases prior to arrest and avoiding fingerprinting are two important beneficial aspects of the Pretrial Diversion Program.

The Pretrial Diversion Program is flexible and attempts to serve offenders who can benefit from such a program. The program has had a remarkable rate of success with approximately 98% of all participants successfully completing it.

Many cases were resolved with counseling by the United States Attorney and the probation officer after the investigating United States probation officer had recommended such a procedure.

## FJC FOCUSING ON LOCAL TRAINING

In the past, most of the Federal Judicial Center's training effort has been in formalized training programs conducted in Washington, D.C. and throughout the nation in seminars and workshops. These efforts have been successful in meeting the mandate of the law to train judicial branch employees. However, the method itself has been insufficient to meet the growing demand for training.

One of the answers to meeting this demand is in the development of local training programs. Under this plan, the Center's staff provides materials, equipment guidance, and expertise to assist the court, or any division of the court, in developing and conducting their own training program. Local training is only one way to enhance the efficiency and effectiveness of the court's operation.

The Center has long recognized the value and need for local training to complement and augment education and training programs. Ever since our inception, funds have been designated for tuition aid programs. In addition, the Center has maintained a film library which provides films on request. However, in the past, the Center did not have a concentrated staff effort to combine the activities of local training and make them easily accessible.

On March 1, 1977, a Local Training Branch was established within the Continuing Education and Training Division. This branch is under the supervision of John W. Sisson, Jr., who serves as Chief. Assisting Mr. Sisson are Elizabeth C. Brennan, Educational Assistant, and Doris J. Marlett, Education Assistant.

To accomplish their task in assisting in the efforts of local training, several areas have been identified. These include: training coordinators, short term courses, technical assistance, specialized training programs, and audio-visual programs.

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William E. Foley, Deputy Director, Administrative Office, U. S. Courts



The training coordinator will provide a local resource in each court. This person has been designated by his supervisor to develop and encourage training for others. The Center cannot train everyone to assess training needs, coordinate training programs, and develop formal or personal programs, but it can provide the expertise to the training coordinator in each court. At the present time, one person has been designated in each probation office to serve in this capacity. Very shortly, 39 persons will be trained to represent the clerk's office of the 39 largest courts in the U.S. With the probation officer and clerk's office personnel trained as training coordinators, it will be easier to implement court training programs.

The second area is the Short Term In-Court Courses. These courses will be conducted in a court on request. They cover such topics as time management, work simplification, planning, decision-making and communication skills. Specialized courses will be developed where needed and provided to court personnel as a means of enhancing the work proficiency. The instructors for these courses can be provided through contract sources, or through court personnel who have been designated to serve as instructors for the topic presented. Two courses have been presented in the past. One is entitled, "Improving Supervisory Skills," and the other, "Management for Supervisors." A third course is presently being developed entitled "Court Personnel Development."

A third area is Technical Assistance. Representatives of the Education and Training Division can on request visit local courts to assess training needs, develop a training calendar, or conduct specific training programs. In addition, teams of persons who are knowledgeable in a given area will be developed to present informal training programs in areas where expertise is needed.

This program was initiated in the bankruptcy staff training area but will eventually be expanded to any area of the court.

Another area which will eventually find full implementation in the Local Training Branch is the area of self study programs. Not all training will be accomplished in group situations. The Local Training Branch will encourage tuition aid where this form of training would be most helpful. In addition, the correspondence study and other methods of self training will be made available from the Center.

A final area being developed relates to audio-visual programs. The Center will provide a wide variety of services to assist the local training efforts through the

loan of films, video cassettes, audio-cassettes, and the purchase of training equipment for court use.

Recently, the Center purchased five video cameras, recorders, and tape players to enhance the training effort of five courts. When the equipment was placed in the court, a one-week training program was conducted to assist court personnel in learning how to operate video cassettes. There are now over 3,000 cassettes available to help persons in their self-development study. An *Educational Media Catalogue* has been prepared by the Center to list all films, video cassettes, and audio-cassettes which are available for loan. Copies of this catalogue will soon be available.

## NEW PATENT OFFICE RULES MAY AID PATENT LITIGATION

INTERVIEW WITH CHIEF JUDGE HOWARD T. MARKEY,  
COURT OF CUSTOMS AND PATENT APPEALS

**There are new Rules in the Patent Office. Might they aid the courts in patent litigation?**

The particular rule of interest is amended Rule 175 (37 C.F.R. § 1.175) (see 42 Fed. Reg. 5588 (1977)), which enables a patent owner to submit his patent for reexamination in the light of prior art which has come to light, or whose relevance has come to light, after his patent was issued. Upon reexamination, the patent may be rendered useless, affirmed with the same claims, or reissued with amended claims.

**To what court problems does that new Rule relate?**

First, in many patent suits, the alleged infringer cites a number of prior art patents, publications, or publicly used devices, which had apparently not been considered by the Patent and Trademark Office (PTO) before it issued the patent sued upon. That forces the court, as some judges have said, to become "super examiners" with respect to the newly cited material. Courts have been forced to consider that material "de

novo," without the benefit of prior consideration by expert examiners in the PTO. Now it will be possible to insure that all prior art presented to the court has been first considered by the PTO.

Second, in some cases the inventor had made a patentable invention, which deserved some protection, but courts were forced to narrowly interpret his claims or declare them invalid because they were broad enough to encompass the newly cited art. Now his claims can be amended in the PTO and it will be necessary less often for courts to apply the judicial doctrines of "equivalents" and "reverse equivalents" to hold or release an infringer whose device did or did not in fact appropriate the invention.

Third, many patent cases involve an inordinate amount of pre-trial skirmishing, with many demands for rulings on discovery questions. The skirmishes relating to prior art can be conducted in the PTO.

(See PATENT, page 8)



(PATENT, from page 7)

**What will be the mechanics in court?**

When the alleged infringer has cited new art, I suppose the patent owner will move for a stay, announcing his filing for reexamination in the PTO. The alleged infringer might object. In any case, the court may grant a stay. I will be surprised if some courts don't eventually order reexamination, *sua sponte*. When reexamination is complete, and if the patent owner still has an effective patent, with claims he thinks infringed, he will move to lift the stay.

**What do you see as the main advantages in this?**

Primarily, a reduction in number of patent suits prosecuted. In those cases in which reexamination results in effective invalidity, the suit will no doubt be dismissed. When new or amended claims are substituted, the accused product may clearly not infringe those claims, and again there should be a dismissal. Where reexamination was thorough and the resulting claims are clearly infringed, the alleged infringer may look more favorably toward settlement possibilities, though he is of course entitled to his day in court if he still thinks the examiners were wrong, or if he has equitable defenses or counterclaims (which are not involved in reexamination). Certainly reexamination will not bind the courts, though some will give weight to its result on the issues resolved in reexamination.

Next, a reduction in complexity and length of trial. The presumably thorough record on reexamination, involving novelty, utility and obviousness in view of all the art, will doubtless be entered in evidence. The opportunity to challenge that record must remain open, but such challenges, when they do occur, can be sharply focused. Limitation of issues, defenses and evidence should be more easily achieved in pre-trial conferences occurring after reex-

amination.

Last, but not least, costs will be reduced for all concerned. It is much cheaper and normally quicker, for both parties to let the examiner reexamine than to force the court to examine. It will obviously save judicial time and effort in patent cases.

**Is this procedure mandatory upon the court or the parties?**

No. It is only a Rule in the PTO. Either party may feel "safer" in submitting the patent as is to the court, and may refrain from or resist a stay for reexamination. The main value in this interview is to alert the district judges to the availability of the mechanism. I can visualize a court asking the patent owner if he intends to obtain reexamination, and asking if not, why not? I foresee very few of our overloaded courts denying the motion to stay. Not many patent owners will undergo the expense of litigation when they could either end it or improve their position by a relatively inexpensive PTO procedure. Similarly, few alleged infringers will insist on the more expensive lawsuit, though some may fear improvement in the patent owner's case and try to hold back on citing new art. Doubtless there will be maneuvering on both sides, but I'm certain the courts will act appropriately in the circumstances of each case.

**What, if any, is the effect of the Speedy Trial Act on this procedure?**

Where the Speedy Trial Act has severely limited, or virtually precluded, civil actions, the use of this procedure will be encouraged. An excuse for avoiding reexamination may dissolve in the face of a four year wait for trial. In such cases, it seems even more advisable to say, "Let's see what the PTO has to say about this new art and these claims."

**Could the trial and reexamination be run concurrently?**

Yes, but that would defeat the purpose of the procedure and

deny its benefits to all concerned. A motion for preliminary injunction alleging irreparable harm, may have to be heard. cannot foresee a court proceeding with trial on the merits of the patent as originally issued, only to be confronted in mid-trial with the reexamined patent and possibly new claims.

**How long might the reexamination take?**

Hard to guess. The application like all reissue applications, will have priority in the PTO. The patent owner can appeal, with priority, to the Board of Appeals in the PTO. From there he can appeal to this court or to the District Court here. Under our Rules, we can and would give priority to such an appeal. We currently average eight months from appeal to decision, with many cases of lesser technological complexity requiring a much shorter interval. Overall, I'd estimate an average of about a year, with vigorous prosecution by the patent owner. In view of crowded court dockets, particularly in industrial areas where most patent suits originate, and in view of extended pre-trial time in patent suits, I don't believe the delay from reexamination will be of much influence, except in a long-pending case ready for trial after voluminous discovery. Presumably, the time consumed by the stay will not count against the court's statistical picture.

**Anything else to report on the reexamination Rule?**

Well I should have said at the outset that the Rule was created to improve the quality of patent by getting all prior art before the PTO. In this sense, it responds to proposals for legislative imposition of reexamination. The important thing for us is its potential for easing some of the burden on the courts. It will not remove the burden, certainly. Courts will still have to determine whether the PTO was wrong twice, when such continues after reexamination and will have to consider the us-



quitable matters. But the Rule should help precisely in the obviousness and technological areas which have increased the burden and generated complaints of judges.

I should also have said the procedure is brand new. Few reexamination requests have been filed. Hence what I've said is prognostication, but if it serves to alert the district courts to a possible time saver, even prognostication may be justified.

### PLEA BARGAINING STUDY RELEASED

A major study of "Plea Bargaining in the United States" commissioned by the Department of Justice was recently released.

The 311-page study was conducted by the Institute of Criminal Law and Procedure of the Georgetown University Law Center.

The study said that the issue of plea bargaining occupies a central position among those concerned with the operation of the criminal justice system. In addition, there appears to be some uncertainty and confusion both inside the criminal justice system and with the public as to the nature, scope, purpose, and value of plea bargaining as a form of case resolution in our system. Moreover, existing attitudes toward plea bargaining range from total endorsement to complete rejection.

Over the last decade the controversy over plea bargaining has become intensive and there has been a great proliferation of literature on the subject.

The report states that the primary rationale for plea bargaining is administrative efficiency to control the calendar and that many judges as well as prosecutors believe that a substantial decrease in pleas would create chaos in the system of justice.

Proponents of plea bargaining believe in the legitimization of plea bargaining through existing structures and judicial oversight. They assume that under no cir-

cumstance can there be a rigid prohibition of plea bargaining in the real world.

Those opposed believe it to be undesirable, illegal, and unreasonable; that its existence and accompanying pressures will cause laxness in observing Constitutional requirements.

Here are some of the major points which the study made:

- Data available from 20 states indicate that rural prosecutors use plea bargaining more readily than prosecutors in larger jurisdictions.

- Two types of plea bargaining were discovered: explicit and implicit. However, at the felony level most bargaining is explicit.

- Few jurisdictions were found where a systematic and rigorous procedure had been established to control the discretion exercised by assistant prosecutors.

- Most prosecutors consider the strength of a case an important factor prior to making a decision. However, two other factors—the offense and the prior record of the offender—are taken into consideration.

- Some prosecutors and defense attorneys believe the plea negotiation process is superior to a trial in determining the factual truth of a case.

- A factually guilty defendant may be legally innocent because a weak case may be difficult to prove at trial. Bargaining permits "half a loaf" where trial outcome is in doubt. Historically, plea bargaining was referred to as "compromising" or "settling" criminal cases. Scholars have criticized the "half a loaf" philosophy as contradicting the prosecutor's duty to see that justice is done.

- It is clear that the strength of certain evidence may be colored by prosecutorial knowledge or perception of the defendant or victim's character.

Despite these limitations, the evidence suggests that strong policy can have a profound impact on the system. Certain functions, primarily charging, are controlled solely by the prosecutor. Strong screening procedures, in conjunc-

tion with the charging powers, can reduce the possibility of factually and legally innocent defendants being convicted through plea bargaining. Strong screening can eliminate weak cases and increase the number of trials as well as change sentencing patterns which may involve primarily strong and serious cases.

The study urged an end to secrecy in plea bargaining: "The game is played in secret", a factor encouraging the informal relationships endemic throughout the system. We must ask whether this so distorts the adversary system as to render counsel ineffective.

Concerning the participation of the judge in the plea bargaining process, the study reported, "those advocating a direct judicial role suggest that only through active judicial participation can a sufficient amount of predictability in the sentence be insured. Some believe that such participation may expedite the process. Contrary to those objecting, some believe that only through involvement can a judge effectively oversee plea bargaining.

However, the role of the judge in plea bargaining varies substantially depending on whether the proceeding is held in a state or a federal court. In Dade County, Florida the Center for Studies in Criminal Justice of the University of Chicago Law School is testing a pretrial process that calls for a state judge to preside over a formal conference that includes the prosecutor, defense counsel and, on a voluntary basis, the defendant, the victim and the arresting officer. (See *Letting Light Into Plea Bargaining* by Wayne A. Kerstetter in the Summer 1977 issue of the *Judges' Journal*.)

This judicial participation is expressly rejected by the ABA's Minimum Standards for Criminal Justice Relating to Pleas of Guilty which were adopted in 1968 by the ABA House of Delegates.

In federal court, Rule 11(e)(1) specifically forbids federal judges (see STUDY, page 10)



(STUDY, from page 9)

from participating in any discussion of either a nolo contendere or guilty plea. Writing in *The Practical Lawyer* (Vol. 22, number 6), Judge Walter E. Hoffman (E.D. Va.) outlined in detail the effects of the Amendments to Rule 11 of the Federal Rules of Criminal Procedure which were adopted by Congress in 1975.

Judge Hoffman wrote, "Attorneys and judges are confronted with a 'new ball game' in the federal system. While plea bargaining has been a common practice in most state courts, it is now being brought into the open in the federal courts, where it will be carefully scrutinized by the media and the public in general."

## DOJ calendar

Sept. 26-Oct. 1 Seminar for Newly Appointed District Judges, Washington, DC

Sept. 27-30 Advanced Seminar for U.S. Magistrates, Chicago, IL

Sept. 28 Report Writing Workshop, Newark, NJ

Oct. 3-8 Seminar for Newly Appointed Bankruptcy Referees, Washington, DC

Oct. 6-7 Conference of Metropolitan Chief Judges, Brownsville, TX

Oct. 6-7 Employee Management Workshop, Portland, OR

Oct. 11-13 Workshop for Probation Clerks, Sacramento, CA

Oct. 14 Time Management Workshop, San Diego, CA

Oct. 17-20 Management Training for Supervisors, Albuquerque, NM

Oct. 17-21 Advanced Seminar for Probation Officers, Tucson, AZ

Oct. 25-28 Management Training for Supervisors, Las Vegas, NV

Oct. 26 Report Writing Workshop, Newark, NJ

Oct. 31-Nov. 4 4 Orientation Seminar for Magistrates, Washington, DC

## PERSONNEL

### APPOINTMENTS:

Earl Ernest Veron, U.S. District Judge for the Western District of Louisiana, Aug. 12

Edward L. Filippine, U.S. District Judge for the Eastern District of Missouri, Aug. 26

Proctor R. Hug, Jr., U.S. Circuit Judge for the Ninth Circuit Court of Appeals, Sept. 16

### ELEVATION:

William C. Stuart, Chief Judge for the U.S. District Court for the Southern District of Iowa, Aug. 15

### NOMINATIONS:

Eugene H. Nickerson, U.S. District Judge for the Eastern District of New York, Aug. 15

Alvin B. Rubin, U.S. Circuit Judge for the Fifth Circuit Court of Appeals, Aug. 15

Charles P. Sifton, U.S. District Judge for the Eastern District of New York, Aug. 15

Edward H. Johnstone, U.S. District Judge for the Western District of Kentucky, Aug. 22

Gilbert S. Merritt, U.S. Circuit Judge for the Sixth Circuit Court of Appeals, Aug. 22

Thomas Tang, U.S. Circuit Judge for the Ninth Circuit Court of Appeals, Aug. 29

### DEATH:

Thomas J. Clary, U.S. District Judge for the Eastern District of Pennsylvania, Aug. 1

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THE THIRD BRANCH

VOL. 9, NO. 9 SEPTEMBER 1977

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OCTOBER 1977

## JUDICIAL CONFERENCE HOLDS FALL MEETING

The Judicial Conference of the U.S. held its fall meeting last month at the Supreme Court and following the meeting announced that it had again urged the Congress to complete action on the bill to create additional judgeships for the federal judicial system.

The Conference also reaffirmed its support for legislation which would either abolish or limit diversity jurisdiction since state courts are fully capable of handling these cases.

Here is a summary of some of the other actions taken by the Judicial Conference:

- Approved, in principle, legislation to authorize and regularize use of interpreters in federal district courts including

provisions for qualifying court interpreters;

- Recommended amendments to the Speedy Trial Act of 1974 to increase the time limits;

- Directed that qualification standards to be followed by federal courts in selecting and appointing federal magistrates be put in final form for action by the Judicial Conference at its next session. Among the requirements which the Conference is considering are ten years experience as a member of the bar, strong evidence of good moral character, physical fitness and evidence of competency to perform the duties of a federal magistrate;

- Received a report from the Director of the Administrative

See CONFERENCE page 3

## THE TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Public Law 95-30, signed into law on May 23, 1977, contains numerous features other than changes in the standard deduction already explained in Administrative Office circulars.

One feature [Sec. 301(a)] extends through the tax year of 1976, the former sick pay exclusion, thus allowing those eligible to make such claim through amendment to their 1976 returns.

Title V of the same Act amends §459 of the Social Security Act as amended by P.L. 93-647 (42 U.S.C. §659) to spell out in some detail, procedures for the service on government agencies of legal process (state garnishment) brought for the enforcement

See TAX page 2

## ANGLO-AMERICAN TEAM VISITS FEDERAL JUDICIAL CENTER

For the fifth year an exchange visit was made to this country by a group of high ranking British jurists, solicitors, and barristers.

Judicial members in the group were the Rt. Honorable Lord Diplock, Lord of Appeal in Ordinary; the Rt. Honorable Lord Justice Scarman, Lord Justice of Appeal; Honorable Mr. Justice Eveleigh, Judge of the High Court of Justice, Queen's Bench Division; and Honorable Mr. Justice Griffiths, Judge of the High Court of Justice, Queen's Bench Division. Also included in the team were the Permanent Secretary of the Lord Chancellor's Office, the Registrar in the Master of the Crown Office, and the Chairman of the Senate of the Inns of Court and the Bar.

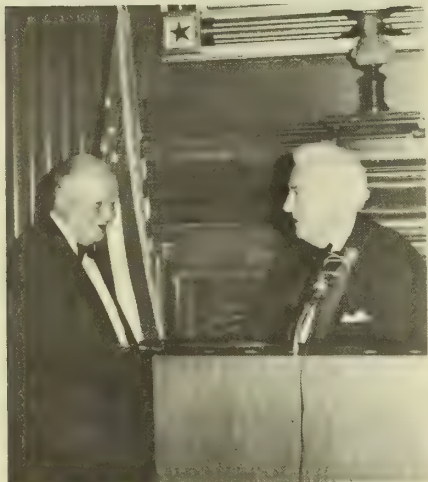
See VISIT page 2



FJC Deputy Director Joseph L. Ebersole (center) visiting with Honorable Mr. Justice Eveleigh (left) and the Rt. Honorable Lord Diplock, Lord of Appeal in Ordinary.



## JUDICIAL CONFERENCE HONORS JUDGE HOFFMAN



Judge Walter E. Hoffman, former FJC Director, receiving Judicial Conference Resolution and handshake from The Chief Justice.

A framed resolution of appreciation was presented to Judge Walter E. Hoffman (E.D.Va.) by the Chief Justice, on behalf of the Judicial Conference, at the Supreme Court on September 29th.

Judge Hoffman was the third Director of the Federal Judicial Center and resigned from this position last July after having reached the statutory retirement age. Previous Directors were Mr. Justice Tom C. Clark and Judge Alfred P. Murrah of the Tenth Circuit.

The resolution reads in part: "Judge Hoffman brought to the Center a wealth of experience as a federal trial judge and a knowledge of the work of the Center through many years of participation in its efforts to improve judicial administration. At the time of his selection as Director, he had served more than 20 years as a judge of the Eastern District of Virginia and for almost twelve years as its Chief Judge."

TAX from page 1

against a Government employee of such individual's obligation to provide child support or make alimony payments. Such legal process will be sent by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to

regulations to be promulgated under §461. Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the monies "involved."

Regulations promulgated by each branch of government (in the case of the Judicial Branch, by the Chief Justice of the United States or his designee) relating to such state garnishment proceedings will identify the name, position, address and telephone number of the agent or agents who have been designated for service of process, and an indication of the data reasonably required in order for such entity to identify promptly the individual concerned. Such regulations shall also provide that the agents designated for service shall respond to relevant interrogatories if authorized by the law of the state in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

VISIT from page 1

Accompanying the visitors were a team of American judges—state and federal—and six lawyers. In past years American judges and lawyers have visited England to exchange information and to discuss techniques and procedures involved in trial and appellate courts. The exchange visits are sponsored by the Institute of Judicial Administration.



FJC Director A. Leo Levin addresses luncheon meeting attended by FJC staff and the Anglo-American team.

## UNIQUE PANEL CREATE BY FEDERAL JUDGE T SETTLE INMATE CASES

Chief Judge Raymond J. Pettir (D.R.I.) has developed a unique and effective technique for disposing of numerous inmate complaints filed by Rhode Island state inmates against state officials.

Rather than hold full court hearings in each instance, temporary grievance committees composed of the chief legal counsel for the State Department of Corrections, the Chief Inspector of the State Department of Corrections, two correctional officers, an attorney for the Inmate Legal Assistance Program and two inmates hear the complaints.

Chief Judge Pettine said the group serves under the direction of U.S. Magistrate Jacob Hagopian.

He said he resorted to the technique "in the hope that through discussions in a structured setting many of these complaints may be resolved short of trial, or not resolved, at least factually refined."

See PANEL page

After meetings in Boston and New York the team traveled to Washington. At the invitation of the Chief Justice, the group met with the Judicial Conference of the United States and with Federal Judicial Center Director, A. Leo Levin, and top staff of the Administrative Office and the Center.



PANEL from page 2

The panel, he said, will help produce policy changes where the grievance indicates such changes are warranted and also weed out what he termed "frivolous claims."

The panel worked six days on thirty-three cases picked at random from the more than 130 cases filed by inmates and settled twenty-nine of those cases, an 88 percent success rate.

However, Chief Judge Pettine cautioned the panel and, through the news media, the public, against being "over-optimistic at this time." It is critical to the true success of this program that the remedial measures agreed upon in the twenty-nine settlements be put into effect immediately by the prison authorities.

Among the settlements reached during the first session of the panel were:

- An agreement to make law books available to inmates in maximum security;
- A promise by prison authorities to make clothes drying equipment available as soon as they have the funds to do so;
- Development of a plan for immediate evacuation of buildings in answer to a complaint that some inmates feared being trapped by fires started by other inmates.

Chief Judge Pettine said that the panel members had agreed to continue working on all the pending prisoner cases and that those few that cannot be resolved will be heard by the Court.

CONFERENCE from page 1

Office, Rowland F. Kirks, concerning the work of the federal judiciary for the year ending June 30, 1977. Mr. Kirks reported that the workload of the Courts of Appeals was increasing while the number of new civil and criminal cases filed in the district courts appeared to be levelling. The number of new appeals filed in the Courts of Appeals had increased during the period by four percent to a record high of 19,118 while the total number of cases, both civil as well as criminal, filed in the district courts was 172,000 compared with 171,700 filed during a comparable period in 1976.



Judge William J. Campbell photographed just after receiving framed tribute from the Board of the Center. Left to right: Judge Campbell, Mrs. Campbell, The Chief Justice and the Campbells' youngest son, Thomas J. Campbell.

### TRIBUTE TO JUDGE WILLIAM J. CAMPBELL

The Supreme Court Conference Room was the setting on September 29 for a well-deserved tribute to Judge William J. Campbell. The occasion was the formal dinner traditionally given for newly-appointed United States District Judges.

At its last meeting the Board of the Federal Judicial Center adopted a Resolution of appreciation for Judge Campbell's outstanding contributions to the work of the Center. During the past seven years, the Judge has presided over 150 conferences and seminars, travelling to all parts of the country. Besides assuring excellence in the presentations on given subjects, his participation has meant a

lighter workload for the Center's Director and a continuation of the Center's policy of always having a tenured Judge present at all conferences for the judiciary.

Judge Campbell requested several months ago to be relieved of his responsibilities at the Center so that he might apply his talents and vast experience to judicial activities in the Seventh Circuit Court of Appeals.

In making the presentation on behalf of the Board, the Chief Justice expressed his personal appreciation and the gratitude of the entire federal judiciary for "the countless tasks willingly assumed and the exceptional and exemplary measure of vigor, dedication, and accomplishment in the improvement of the Federal Judicial System."

### PAROLE COMMISSION ADOPTS NEW RULES

The U.S. Parole Commission last month adopted new rules under which federal prisoners at the commencement of their terms will be given their "presumptive release date."

A complete copy of the new rules has been sent to all district judges, federal magistrates, federal defenders and probation officers by the Administrative Office.

In general, all federal prisoners sentenced on or after September 6, 1977 to sentences of less than seven years will receive initial hearings within 120 days after their arrival at the prison and will then be notified of their "presumptive

release date" from the institution either by parole or mandatory release. However, no release date will be set that is less than the minimum term.

The purpose of this new policy is to reduce the uncertainty which most federal prisoners have had in the past regarding their release date. It is expected that the policy will improve inmate morale and facilitate release planning.

However, the presumptive release date will be periodically reviewed to determine if the requisite conditions have been met and if any intervening factors should be considered such as age or illness.





## FIRST JUDICIAL IMPACT STATEMENT PRESENTED

The Department of Justice has presented the first "judicial impact" statement which outlines in detail the specific effects which a proposed bill would have on the federal court system.

The statement, presented before the Senate Committee on Veterans' Affairs by Deputy Assistant Attorney General Paul Nejelski, analyzed the impact which enactment of S. 364, the Veterans Administration Administrative Procedure and Judicial Review Act would have on federal courts if enacted. The bill, under Section 2, would allow veterans to appeal adverse decisions of the Veterans Administration, usually acting through the Board of Veterans Appeals, to federal district courts.

Deputy Attorney General Nejelski outlined the history of "black lung" cases which suddenly deluged the federal court system after legislation was enacted, and said a similar impact would strike the federal court system if S. 364 were enacted.

He pointed out that during fiscal year 1976, the Board of Veterans Appeals decided 28,482 cases, of which it denied approximately 70 percent or 19,927. Significantly, only fifty cases were filed in federal court that year involving the Board or its decisions.

He told the Committee, "On the basis of experience with social security cases, approximately 20 percent, or some 4,600, of these denials would be appealed to the district courts" if the bill were enacted.

These 4,600 new cases would increase the total number of civil filings in the district courts by 3.4 percent. The increase in caseload would take the equivalent of up to 13 additional federal judges' time to handle veterans' claims alone and, within the Department of Justice, an additional twenty attorneys would be needed in the Civil Division to handle the additional cases.

The bill, Senate Committee observers said, is still pending in the Senate Committee on Veterans' Affairs and is not expected to be acted upon until the next session of the Congress.

## PRETRIAL DIVERSION ACT RECEIVES STRONG SUPPORT

Senators Dennis DeConcini, James Abourezk, Edward Kennedy and Strom Thurmond have introduced the Federal Criminal Diversion Act, S. 1819, and staff members of the Senate Judiciary Committee say there appears to be strong support for the bill.

Hearings were held during the summer and have resumed this fall. The bill is designed to cut the cost of the federal criminal justice system, reduce the criminal caseload of the federal courts and establish alternatives to criminal prosecution for some persons charged with non-violent crimes and, in selected instances, violent offenses.

The bill allows an eligible individual to be diverted out of the criminal justice system. For a one year period, however, he is under the supervision of an administrator designated by the Attorney General. During this period, the charges against him are continued.

In testimony on the bill before the Senate Judiciary Subcommittee on Improvement in Judicial Machinery, Deputy Associate Attorney General Doris Meissner described an experimental diversion plan which has been operating in five judicial districts for two years.

The basic outlines of the program are:

- The decision of the U.S. Attorney to divert is made at the precharge or preindictment stage;
- Defendants must be represented by counsel at each step in the diversion decision and enter the program voluntarily;
- Only individuals against whom there is a prosecutable case may be diverted but persons accused of offenses which would otherwise be referred for state prosecution, twice-convicted felons, addicts, current or former public officials accused of violating the public trust and individuals accused of national security, civil rights and tax offenses are not eligible for diversion under the Justice Department's experimental plan;
- The U.S. Attorney requests a recommendation from the probation officer regarding the suitability of a defendant for

diversion and a program of supervision and services;

- The defendant, counsel, the prosecutor and the probation officer institute diversion by jointly signing an agreement outlining conditions of the diversion period.

- The period of supervision is not to exceed one year except in special cases. Defendants who fail to meet the conditions of the agreement are returned for prosecution.

The typical person diverted under the program is characteristic of the federal prison population with the exception that one-third of those diverted have been female while less than one percent of federal prisoners are women.

Diversion, the experiment has revealed, does not result in great savings for the prosecutor since the amount of time expended on a diversion case is roughly equivalent to that involved in obtaining a guilty plea.

Significantly, where it may save time is in the courtroom since arraignment, motions, hearing, trial and sentencing are avoided, leaving time for more serious criminal cases.

In summary, the Justice Department discovered that diversion may allow for certain savings in the criminal justice system, primarily in reducing the criminal caseload of the federal courts. In addition, diversion does not have a significant impact on the prison system since individuals most likely to be diverted usually would be sentenced to probation or prosecuted.

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

William E. Foley, Deputy Director, Administrative Office, U.S. Courts



# LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

## Enactments

The Clean Air Act Amendments (P.L. 95-95), which extend previously set deadlines for implementing emission standards, were signed into law on August 7. The Amendments expand the enforcement jurisdiction of the federal courts with respect to stationary and mobile sources, citizen suits, and employee protection.

The Fair Debt Collection Practices Act (P.L. 95-109) is a law amending the Consumer Credit Protection Act (15 U.S.C. §1601, *et seq.*) to prohibit abusive practices by debt collectors. The law, which was enacted on September 20, discusses the nature and extent of civil liability of any debt collector who fails to comply with its provisions and authorizes liability enforcement actions to be brought in any appropriate United States district court without regard to the amount in controversy.

## Congressional Action

S. 2149, a bill to create a District Court for the Northern Mariana Islands, was favorably reported by the Senate Judiciary Committee on October 5.

On October 5, the Senate Judiciary Committee favorably reported S. 1566, a bill to amend Title 18 United States Code, to authorize applications for a court order to obtain foreign intelligence information by means of electronic surveillance.

A compromise version of H.R. 544, a bill which liberalizes aspects of the black lung benefits program passed the House on September 19. A companion bill, S. 538, was passed by the Senate on September 20. The House and Senate versions differ in their provisions for court review of government findings of coal company liability. A conference has been slated to settle this and other details of the legislation.

The House Judiciary Subcommittee on Courts, Civil Liberties, and

the Administration of Justice held hearings on September 21, 28 and 29 on pending proposals to revise diversity jurisdiction. The four diversity bills under consideration by Chairman Kastenmeier's Subcommittee were H.R. 761, a bill to abolish diversity of citizenship as a basis of jurisdiction in United States courts which was approved by the Judicial Conference in March, H.R. 7243, which would amend 28 U.S.C. §1332(a)(1) to prohibit a plaintiff from filing a diversity case in a United States district court situated in the state of which he was a citizen and which was also approved by the Judicial Conference in March; H.R. 5546 a bill incorporating the long-standing ALI proposals; and H.R. 9123, a bill recommended by the Department of Justice which duplicates the Conference bill, H.R. 7243.

Testifying at the hearings were Federal Judges Henry Friendly, Charles M. Metzner, and Edward T. Gignoux, Chairman of the Conference's Subcommittee on Federal Jurisdiction. In statements made by Judge Gignoux on behalf of H.R. 761, attention was brought to the burden which diversity actions impose on the federal courts and the problems involved in federal applications of state law in the decision of diversity cases.

Also discussed at the September hearings before Mr. Kastenmeier's Subcommittee was legislation to enlarge the civil and criminal jurisdiction of United States magistrates. The bills under consideration were S. 1613, which was passed by the Senate on July 22; H.R. 7493, a Department of Justice proposal; and H.R. 7811 and H.R. 7812, bills representing Judicial Conference proposals. S. 1613 would expand magistrates' trial jurisdiction in criminal cases to include any misdemeanor which may be prosecuted in a federal court. It would also permit magistrates to try and make final determinations in both jury and non-jury cases where the parties to a civil case have so consented.

Hearings were held October 4-6 in the Senate Judiciary Committee on S. 1437, the legislation to codify, revise and reform the federal criminal laws. The Committee did not complete action and will resume consideration of the bill later in October. An identical bill,

H.R. 6869, is still pending in the House Judiciary Subcommittee on Criminal Justice where hearings were held September 15.

H.R. 5383, a bill to amend the Age Discrimination Act of 1967 by eliminating mandatory retirement on account of age for most federal workers, was passed by the House on September 23. The bill would apply to tax court judges, District of Columbia judges, the United States Comptroller General, and the Director of the Federal Judicial Center, among others. It is now pending in the Senate Committee on Human Resources.

## Introductions

The Judicial Conference has sponsored H.R. 7239, a proposal to revise Chapter 313 of Title 18, United States Code. The bill, which would provide for the civil commitment of individuals acquitted in a criminal prosecution after having raised the defense of insanity, poses an alternative of §3613 of the proposed Criminal Code, S. 1437. It is currently pending in the House Judiciary Subcommittee on Criminal Justice.

On September 20 and 21, parallel bills (H.R. 9219 and S. 2117) were introduced in both the House and Senate dealing with the tort liability of the Government for acts of its employees. The bill would amend Title 28 of the United States Code to provide for an exclusive remedy against the United States in tort claims based on the wrongful acts or omissions of United States employees acting within the scope of their employment or in claims which arise from violations of the Constitution by government employees. The bills are currently pending in House and Senate Judiciary Committees.

S. 1315 would provide for the establishment of the Director of the Administrative Office of the United States Courts of a program to facilitate the use of interpreters in federal courts. The bill would mandate that in any criminal or civil action initiated by the United States where the presiding judicial officer has determined that a defendant or any other party does not speak the English language or suffers from a hearing or speech impairment, the services of a certified or otherwise



## A.O. NEW PUBLICATION FACILITY ONE OF MOST MODERN IN GOVERNMENT

In 1940, the Administrative Office had a small printing unit on the ground floor of the Supreme Court building. Today, in the Maryland suburbs, it has opened one of the most modern and sophisticated printing, publishing and distributing plants in the U.S. Government.

The Forestville, Maryland facility is equipped with the most modern equipment—machines which can print, package and mail in hours books and lengthy reports which in the past took days.

Until the recent opening of this new facility, various functions were carried out in locations scattered throughout the Washington area. Now all publishing-related activities are consolidated in one plant which allows the Administrative Office to make the most efficient use of both its personnel and new equipment.

Twelve employees are currently producing approximately twenty-five million printed pages annually.

The work of the Forestville facility is monitored by the Congressional Joint Committee on Printing which recently asked the Government Printing Office to evaluate the Forestville plant. The evaluation revealed that approximately 85 percent of the work produced by the new plant during a two month period could not have been produced by private printing plants within the time required.

Here is some of the new equipment which has been installed at the Forestville plant:

- Automated film processing equipment for developing and preparing negatives;
- Two presses which can produce 5,000 sheets per hour and which are printed simultaneously on both sides;
- A high capacity collator which assembles 16 separate sheets and can stitch pamphlets together in one operation;
- An addressing and labeling system which can process 7,000 envelopes an hour;
- A plastic film wrapping machine which can complete two packages a minute.

Generally, the new facility's range of functions includes litho-

## FJC PROGRAM FOR NEWLY APPOINTED JUDGES HELD



District Judges confer prior to making presentations at the recent seminar for Newly Appointed District Judges. They are (l. to r.) Judges Cornelia G. Kennedy (E.D. Mich.), Hubert L. Will (N.D. Ill.) and Charles B. Renfrew (N.D. Calif.).



Pictured above are judges attending last month's Seminar for Newly Appointed U.S. District Judges held at the Dolley Madison House. This seminar marked a decade of such meetings and the occasion brought to the Center many "Faculty Judges" who were themselves newly appointed District Judges when the FJC began its program for Continuing Education and Training.

photography, copying (using a Xerox 9200); printing, binding and distribution. Soon, the facility plans to begin mailing the Federal Probation magazine which has been done in the past by the Department of Justice. As a result, the A.O. will receive a substantial cost savings.

In addition, with the installation of a high-speed inserter-sealer machine, the Forestville plant will be able to offer the Administrative Office, the Federal Judicial Center and the Supreme Court a fast mailing service.

LEGISLATION from page 5

competent interpreter shall be utilized. The bill also provides for a program of simultaneous interpretation services in multi-defendant criminal and civil actions. Authorization is given for payment of the expenses incurred in providing the required service by the Director from funds appropriated to the federal judiciary. The bill is currently pending in the Senate Judiciary Subcommittee on Improvement of Judicial Machinery.



## DIVISION OF MANAGEMENT REVIEW COMPLETES SECOND YEAR

The Division of Management Review in the Administrative Office, which has completed its second full year of operation, has now conducted on-site reviews of 26 management and operations of twenty-six district courts and one circuit court.

The major purposes of these reviews are to identify areas where the efficiency and effectiveness of the operations of each office under the direction of the court can be improved, and recommend

to the court specific actions and procedures by which those improvements can be effected.

The reviews include an audit of the financial records of the court, desk-audits of court personnel, examination of records maintained, and observation of office procedure. Particular emphasis is placed upon compliance with statutory and regulatory requirements and utilization of sound management practices.

A standard report format has been developed and is used for all reports prepared by the Division. This format is designed to enable the data collected in court studies

to be compiled and synthesized for analysis of emerging trends, for comparison of similar operations, and for development of recommendations of general application.

Each report describes in detail the operations of the court, with particular attention given to management techniques which might be useful to other federal courts. The reports also include information which will assist the Administrative Office in providing early response to the day-to-day problems and requirements of the judiciary.

In addition to discussing the management and operations of the Clerk's Office, Probation Office, Offices of the U.S. Magistrates, Offices of the Referees-in-Bankruptcy, and Offices of the Court Reporters, the reports also discuss calendar management practices, frequently sharing management techniques utilized in other courts.

Various types of pretrial practices utilized to expedite the disposition of civil cases, different methods for setting trials to ensure that calendar breakdowns occur infrequently, and ways in which magistrates can be better utilized have been of special interest to the courts reviewed to date.

In the financial area, the Division reviews and makes recommendations on how internal control systems can be improved and examines all official accounts for accuracy and completeness. Personnel and leave administration are also reviewed.

The Division is expanding its efforts to provide follow-up assistance to courts in implementing recommendations contained in the reports. Preliminary findings and recommendations are discussed with the Chief Judge of each court upon completion of a review of his court, and, where requested, follow-up visits to the court are made to review the findings and recommendations in detail with the entire bench.

New FTS telephone numbers of key Supreme Court and Administrative Office personnel.  
(Note: Non-FTS callers dial 202 and these numbers to reach the person indicated.)

### Supreme Court

The Administrative Assistant to the Chief Justice, Mark W. Cannon .....	252-3274/5
The Clerk, Michael Rodak .....	252-3012
The Reporter of Decisions, Henry Putzel, Jr. ....	252-3191/2
The Marshal, Alfred Wong .....	252-3294
The Librarian (Acting), Mrs. Betty J. Clowers .....	252-3184/3
Legal Officers, Mrs. Susan A. Goltz .....	252-3283
Marc P. Richman .....	252-3288
Personnel Officer, James R. Powers .....	252-3271
Public Information Officer, Barrett McGurn .....	252-3211/2

### Administrative Office of the U.S. Courts

Director, Rowland F. Kirks .....	633-6021
Deputy Director, William E. Foley .....	633-6097
Special Assistant to Deputy Director, (Speedy Trial Matters), Norbert A. Halloran .....	633-6100
Assistant Director, Legal, Legislative and Special Projects, Joseph F. Spaniol, Jr. ....	633-6135
General Counsel, Carl H. Imlay .....	633-6127
Acting Assistant Director, Plans & Analysis, Richard Deane .....	633-6027
Assistant Director, Business and Personnel, Gilbert L. Bates .....	633-6101
Chief, Division of Administrative Services, Robert H. Hartzell .....	633-6117
Chief, Division of Bankruptcy, Berkeley Wright .....	633-6231
Chief, Clerks Division, Robert J. Pellicoro .....	633-6236
Chief, Division of Financial Management, Edward V. Garabedian .....	633-6122
Chief, Division of Information Systems, William E. Davis .....	633-6106
Chief, Legislative Analysis Division, William J. Weller .....	633-6040
Chief, Division of Magistrates, Peter G. McCabe .....	633-6251
Chief, Management Review, James B. Ueberhorst .....	633-6200
Chief, Division of Personnel, R. Glenn Johnson .....	633-6115
Chief, Probation Division, Wayne Jackson .....	633-6226
Chief (Acting) Statistical Analysis and Reports Division, James A. McCafferty .....	633-6094



# PERS nnel

## NOMINATION

Pierre N. Leval, U.S. District Judge,  
S.D. New York, October 17

## CONFIRMATION

Thomas A. Ballantine, Jr., U.S.  
District Judge, W.D. Kentucky,  
October 12

Louis Oberdorfer, U.S. District  
Judge, District of Columbia,  
September 16

Thomas Tang, U.S. Circuit Judge,  
(CA-9), October 7

Nicholas J. Bua, U.S. District  
Judge, N.D. Illinois, October 7

Stanley J. Roszkowski, U.S. District  
Judge, N.D. Illinois, October 7

Edward H. Johnstone, U.S. District  
Judge, W.D. Kentucky, October 7

Charles P. Sifton, U.S. District  
Judge, E.D. New York, October  
12

Harry H. MacLaughlin, U.S. District  
Judge, D. Minn., September 16

Eugene H. Nickerson, U.S. District  
Judge, E.D. New York, October  
20

## ELEVATION

Alvin B. Rubin, U.S. Circuit Judge,  
(CA-5), September 16

A. Leon Higginbotham, Jr., U.S.  
Circuit Judge, (CA-3), October 7

Hugh H. Bownes, U.S. Circuit  
Judge, (CA-1), October 7

Damon J. Keith, U.S. Circuit Judge  
(CA-6), October 20

# academic calendar

Oct. 31-Nov. 4—Orientation  
Seminar for U.S. Magistrates,  
Washington, DC

Nov. 3-4 Management Training for  
Supervisors, Atlanta, GA

Nov. 3-4 Workshop for District  
Judges (Fourth and Fifth Circuits),  
Hilton Head Island, SC

Nov. 9-10 Management Training  
for Supervisors, Raleigh, NC

Nov. 10 Report Writing Workshop,  
Newark, NJ

Nov. 14-16 Trial Advocacy  
Seminar, Chicago, IL

Nov. 14-16 Workshop for Probation  
Clerks, Oklahoma City, OK

Nov. 14-16 Seminar for the Staff of  
U.S. Magistrates, Washington,  
DC

Nov. 23 Report Writing Workshop,  
Newark, NJ

Nov. 28-Dec. 2 Advanced Seminar  
for U.S. Probation Officers,  
Atlanta, GA

Dec. 1-2 Workshop for District  
Judges (Ninth Circuit), San  
Diego, CA

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Eastern District of Virginia  
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THE THIRD BRANCH  
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### JUDGE ELMO HUNTER NAMED CHAIRMAN COURT ADMINISTRATION COMMITTEE

The Chief Justice this month announced the appointment of Judge Elmo B. Hunter (W.D. Mo.) to the chairmanship of the Judicial Conference Committee on Court Administration. The Judge has been a member of the committee since 1969.

Judge Hunter replaces Judge Robert A. Ainsworth, Jr. (CA-5) who will remain on the committee.

In making the announcement, the Chief Justice noted that the change would effectuate a policy of periodically rotating the chairmanship of this and other Judicial Conference committees. This rotation system will

(See HUNTER, page 2)

### BANKRUPTCY BILL HEARINGS SET

The Bankruptcy Bill, H.R. 8200, introduced by Representative Don Edwards (Dem. Cal.) which calls for the creation of a system of Article III Bankruptcy Courts as well as a Justice Department U.S. Trustee system is still pending on the House calendar and may be called up at any time for final consideration.

An amendment to the bill offered by Representative George Danielson (Dem. Cal.) with the support of Representative Thomas Railsback (Rep. Ill.) which eliminates the concept of a separate Article III court and

(See BANKRUPTCY, page 3)

### INTERVIEW WITH SEN. DENNIS DeCONCINI

Senator Dennis DeConcini (Dem.-Ariz.) was selected to head the key Senate Judiciary Committee on Improvements in Judicial Machinery early last March. The Senator who is a former Tucson, Arizona prosecutor is serving his first term as a senator. This interview highlights some of the most important issues facing the federal judiciary today.

Now that you have been the Chairman of the Subcommittee on Improvements in Judicial Machinery for several months, do you have some

(See INTERVIEW, page 3)

### ROWLAND F. KIRKS DIES AT 62

Rowland Falconer Kirks, Director of the Administrative Office of the United States Courts, died November 2. He was 62 years old.

Chief Justice Warren E. Burger made the following statement:

Rowland F. Kirks was the fourth Director of the Administrative Office of the U.S. Courts since that body was created in 1939 and his untimely death is a great loss to the judicial system. After outstanding careers as a lawyer, as a legal educator, and in the military, he was appointed by the Supreme Court as Director in 1970.

His tenure in that office coincided with a period of unparalleled stress on the federal courts and his innovative leadership enabled the system to function in the face of great handicaps.

He introduced broad programs of computer controls, new methods of statistical analysis and a new method of jury utilization; the latter alone has saved more than 2 million dollars annually. His

(See KIRKS, page 2)



Rowland F. Kirks



(HUNTER, from page 1)

afford an opportunity for a greater number of judges to exercise their leadership in the consideration of vital matters affecting the federal judiciary. This will undoubtedly inure to the benefit of the judges and the courts they serve.

The Court Administration Committee, with 15 members, is the largest standing committee of the Conference and functions through four subcommittees. There are a total of ten standing committees and eight subcommittees of the Conference. In announcing Judge Hunter's appointment the Chief Justice commended the outstanding leadership of Judge Ainsworth and added, "Judge Ainsworth is a distinguished judge with many years experience on the federal bench. He has given leadership and direction to one of the most important committees of the Conference, and during his term as chairman many highly significant issues have been studied. His dedication to solving the problems of the federal courts has been enormously valuable to the Judicial Conference."



The Third Branch

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Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph F. Spaniol, Jr., Deputy Director Administrative Office, U.S. Courts.

(KIRKS, from page 1)

tenure as Director saw the creation of the new profession of court administrators and his work was a major factor in this development.

A native of Washington, D.C., Mr. Kirks was a graduate of the Virginia Military Institute (A.B. 1935), and of the National University Law School from which he received a bachelor of laws degree, a master's degree, and a doctorate in juridical science. He was an assistant professor of law at National University from 1940 to 1941, professor of law in 1948, dean of the law school in 1949 and president of National University in 1953. The university is now part of George Washington University in the District of Columbia. At 34 Mr. Kirks was the country's second youngest law dean, and at 39 one of the youngest university presidents.

During World War II Mr. Kirks served in the Army rising from first lieutenant to lieutenant colonel. He was on the staff of General Lucius Clay in charge of foreign trade for Occupied Germany. Returning to the Army reserves he rose to the rank of major general, commanding the reserves in the District of Columbia, Maryland, Virginia, Delaware and the Eastern section of West Virginia. On appointment to the Administrative Office of the United States Courts he resigned his commission, completing 35 years of military service, concerned about conflict between his Judicial and Executive Branch duties. On retirement from the military Mr. Kirks received the Distinguished Service Medal, the highest non-combat decoration.

President Truman appointed Mr. Kirks a member of his "Little Cabinet" in 1952 as Assistant Attorney General and as Director of the Office of Alien Property. From 1953 to 1960 Mr. Kirks was legislative counsel for the National Automobile Dealers Association, and from 1960 to 1970 general counsel and director of government relations for the American Textile Manufacturers Institute. He was textile adviser to the United States mission negotiating trade and tariff agreements in Geneva, 1961-1962.

From 1953 to 1962 Mr. Kirks was a member of the District of Columbia Board of Education. He was chairman of the legislative committee of the Board and a member of a three-member committee to draft the integration of the schools' two-track system following the Supreme Court verdict in *Brown v. Board of Education*.

As Director of the Administrative Office of the United States Courts, Mr. Kirks had an immediate staff of 400 while overseeing aspects of the work of 3,500 others in the offices of federal court clerks, probation offices, offices of the United States Magistrates and offices of Referees in Bankruptcy. Support was provided to more than 600 federal judges as caseloads in United States District Courts rose sixty-three percent and in Courts of Appeal seventy-five percent. Many modernizations were put into effect. Use of computer technology and data processing are still in the developmental and expansion stage with regard to personnel supervision, payrolls and legal archives in the Government's Judicial Branch. In the summer of 1971 Mr. Kirks put into effect the Congressionally-created Federal Public Defender system to aid the indigent. There are now thirty Public Defenders with staff numbering 200.

Mr. Kirks was buried with full military honors in Arlington National Cemetery. The Supreme Court attended as a body. The family asked that any contributions be made to the Rowland Kirk Memorial Fund at VMI.





BANKRUPTCY, from page 1)

transfers the U.S. Trustee system from the Department of Justice to the Judiciary, was adopted in the Committee of the Whole House on October 28th after a two-hour debate by vote of 183 to 158. This amendment will be voted on again when the bill is reported from the committee of the Whole to the House of Representatives, which will not occur until next year.

Congressman Edwards plans to hold additional hearings on the bill beginning December 12, and these hearings are expected to focus on the two aspects of the bill mentioned earlier.

Members of the Special Ad Hoc Committee of the Judicial Conference of the U.S. have been considering amendments to the House bill and members of the Judicial Conference have been asked to testify on the measure.

In a related development, Senator Dennis DeConcini (Dem. Ariz.) on October 31 introduced S. 2266, a bankruptcy bill which, in general, does not contain the controversial features of the House bill. The bill gives bankruptcy referees additional jurisdiction. Hearings on the Senate bill have been set for November 28.

## Bulletin

### A.O. DIRECTOR AND DEPUTY DIRECTOR SELECTED

The Supreme Court has selected William E. Foley as Director of the Administrative Office of the United States Courts and Joseph F. Spaniol, Jr. as Deputy Director. The appointments became effective on November 21, 1977. A comprehensive story will be published in the December issue.

(INTERVIEW from page 1)

### specific ideas as to what the major problems of the federal courts are?

My perception of the causes for the stresses and strains now occurring in our judicial system that I observed as practitioner in Arizona have only been reinforced. The enormous caseload that has hit every judicial district in the country is the core of the problem. For all its many excellences the Federal Judiciary is not now providing the full and adequate justice promised by the Constitution. I have made a commitment to do everything I can to help the system help itself.

Adequate judgepower is essential as are innovative new methods to deal with the litigation explosion of the seventies. I am extremely fortunate to have as an ally in this task the Attorney General, Judge Griffin Bell. He has created a special office within the Department of Justice that is a counterpart to the Judicial Improvements Subcommittee. The working alliance that is evolving holds great promise.

### What court-related legislation that has been or is about to be introduced do you consider to be top priority?

The number-one priority is the creation of sufficient judgeships throughout the country to assure access and speedy justice. The Senate acted swiftly this year in passing S.11, the Omnibus Judgeship Bill, that creates 148 new federal judgeships—113 district court judges and 35 circuit court judges. I felt legislation of this sort was long overdue. I was not the prime force behind this bill, but I did work long and hard to get it adopted in the manner I thought best, not only for my state but for the country as a whole. No new federal judgeships have been created in seven years and the burden on judges and litigants has reached the breaking point.



Senator Dennis DeConcini

But additional judgeships alone are not the answer and my second priority will be to create new methods to assist judges and the system. This was the thought behind the Magistrates Bill, S.1613, which increased the jurisdiction of United States Magistrates and will make them even more useful in the future.

Magistrates in many districts today are the only thing that makes it possible for a civil calendar to be considered since so many district court judges are tied up with their criminal dockets. Magistrates can relieve district judges of many tasks that simply don't have to be performed by Article III judges.

A host of other bills also fall into this category of relieving the federal system of part of the caseload. Among these are the diversity jurisdiction bill, the pretrial diversion bill, and an arbitration bill.

Another high-priority bill which has been the subject of debate for many years is the Judicial Tenure Act, S. 1423, which was substantially modified from the original bill, and I believe it represents a significant step toward restoring respect for our judicial system.

I am concerned and sensitive to the fact that some federal judges perceive this legislation as being in some way anti-federal judge. Far from it. I

(See INTERVIEW, page 4)



(INTERVIEW from page 3)

hope to convince these judges that the creation of a system in addition to impeachment for the removal of unfit or disabled federal judges is really in their best interest and will go a long way toward restoring the perception of a healthy judiciary.

Another major item is the Bankruptcy Reform Bill, S. 2266, which I have just introduced. This represents the first overhaul of the bankruptcy law in nearly 40 years. I am hopeful that some measure will be passed next year.

**I understand that you are talking about an omnibus court administration bill which will cover many so-called house-keeping matters for the federal courts. Would you care to comment on that?**

There are a host of other bills of a housekeeping nature that are very important to this judiciary subcommittee. These bills are not the type that get a lot of attention from the press, and as individual bills are not of major importance. But in fact, the proper and efficient administration of the judicial system is critical to our operation of that branch of government and the delivery of justice.

Our staff is attempting to gather from the various areas of the judiciary, administrative and other minor items that need to be changed, or at least considered. Assuming they come up with a significant amount of suggestions for change, we will probably hold hearings next year to lay the groundwork for introducing a bill. We may also hold some oversight hearings on the state of the judiciary in the near future.

**The Omnibus Court Administration bill sounds interesting. I doubt it's ever been done before.**

No, it hasn't, but as a matter of fact, we have already held some hearings on a number of items that could have been included in

the omnibus bill—like jury fee increases, marshal fee increases in serving civil process, witness fees, etc., but we didn't want to wait because we felt there was merit to moving ahead now on those particular bills.

**Do you think the Court Interpreter's Act will have a significant impact on the federal court system?**

I wouldn't say it is going to have any major impact on the court, but it is important to those people to avail themselves of it. I think it's important to the courts to keep access open to those who can't speak the English language or have other language related disabilities.

**Have you taken a position on the recent proposal to cut back on federal diversity jurisdiction, possibly by transferring some cases back out to state courts?**

No. I haven't taken an official position on it. The Administration has had a diversity bill introduced by Senator Eastland, and it has been assigned to our subcommittee.

We will address it some time next year. The House Judiciary Committee is holding hearings currently on diversity and, quite frankly, I am going to see what their hearings produce and review their reports before we take action in the Senate.

**At the so-called "Pound Revisited" Conference which was held a year ago last April, there were suggestions that minor disputes be resolved in the community or neighborhood centers. Do you see any problems using that method to settle cases that would otherwise come to the courts?**

Well, that sounds good, and I am not adverse to considering it, but I remain skeptical. My first approach would be making courts more available to the public—more accessible. The expansion of magistrates' jurisdiction may lead to their resolving minor disputes.

As to ideas for neighborhood

councils to resolve landlord-tenant or tenant-tenant problems, or what have you—I have not seen evidence that they work. I wouldn't mind implementing several pilot projects and then evaluating their success. I will keep an open mind on the subject until the evaluation is complete.

**You feel most people want their "day in court"?**

Yes. I have a bit of a problem about the potential for the success of these proposals. For example, if the three of us and a neighbors and you and I are having a problem and the third is going to be the arbitrator, well, it sounds good—that we are going to abide by the decision. But, in fact the decision is for you, I'm going to be mad at two people and I'm not sure that I'm going to abide by the decision; whereas if the decisionmaker is a judge, I am more apt to say that the authority of the court has ruled.

The important thing is to make courts as accessible as possible—so that you and I can get before a judge rather than a neighborhood arbitrator. That's my philosophical approach to it.

**Senator, there's been growing use of six-member civil juries in the federal courts. Eighty-one districts now use them. Do you favor this trend?**

Well, I have not made up my mind. I think it's proper for local rules to consider it and implement it. We held hearings recently and this was the subject of the bill we were requested to introduce and we did. Some of the testimony was very influential against the proposal. The best way to involve people in the judicial process is through the jury system. It occurs to me that there are areas where you could use a smaller jury. Whether or not we would want to mandate it in civil cases, as in the bill introduced, is the real question. I am not leaning in that direction at all right now.

**Turning to another subject, Senator, what are your views**



n mandatory minimum sentences?

I have a long standing feeling based on my years both as a prosecutor and defense lawyer, and being involved with prisons through service on parole boards, that the present sentencing policy in this country is antiquated. If anything, it is a deterrent to any constructive rehabilitation. I lean toward some proposals I have heard of for mandatory minimum sentences. There are many who argue against that and some of them make good sense.

My experience has been that in the sentencing process, particularly the probation and parole process, really encourages a defendant to simply play the game. In fact, we have not achieved rehabilitation, we have really only reached out to force the defendant to say what we want to hear—"we" being the parole board and society.

For a very short time prisoners indicate that they are rehabilitated when, in fact, they are not and never were. The recidivism rate certainly bears that out. Part of the population in prison have the desire to correct their ways while incarcerated, so we need to have programs available.

I believe very strongly in the therapeutic community approach which is based on, "Do you want to help yourself?" and not the traditional, "You be good and you get out early". It helps the person adjust to his life and understand his life, and he's going to be in there for ten years, non-parole time, he's got to be more satisfied with his life. I've had some experience with this type approach in both the federal prison system and in Arizona. I feel the mandatory minimum can work in conjunction with a therapeutic community approach.

**Are today's sentences too severe?**

While I do find some merit to the idea that punitiveness is good for the sake of deterrence,

generally our sentences are too long and ineffective. Our penal system must give those inmates who want to solve their problems an opportunity to do so.

You and I, on the outside, can't give advice to legislative committees on how to deal with the inmates so that they will act non-criminally. We've got to talk to the inmates, listen to them, and try to understand them. Only then, with the good and bad, the "con" and "non-con" information that comes forward, can you build a program that goes to the heart of their individual problems.

**What about appellate review of sentences?**

I think there is some merit to having procedural review of sentences, particularly sentences that have been imposed many years ago under very emotional, difficult circumstances for the community, for the court, and for the law enforcement agency at the time. These things do change, and they should be subject to some review. If you had a real therapeutic rehabilitation program that would be an even greater reason to have review, in my opinion.

**What do you see as the long-term and short-term impact of the codification of the federal criminal code?**

I think any recodification will initially be difficult on the judiciary, law enforcement personnel, lawyers, and everybody in the criminal justice system. The disparities in our criminal law that I am familiar with, demonstrate to me a need to move in the direction of recodification. The unfortunate problem is that there is less willingness to compromise in the area of criminal code justice than almost any place else because people have strong feelings about criminal law. How long a sentence should this crime carry? What should be considered as the proper classification of that crime?

(See INTERVIEW, page 6)

## WHITE HOUSE SEEKING VIEWS ON CREATION OF NATIONAL INSTITUTE OF JUSTICE

The Justice System Improvement Study of President Carter's Reorganization Project is conducting some preliminary work concerning the possible creation of a National Institute of Justice (NIJ).

As part of this project, the White House Office of Management and Budget has sent a wide-ranging questionnaire to members of the judiciary and other officials who have indicated an interest in judicial administration.

Here are some of the major questions surrounding the creation of the Institute which are included in the questionnaire:

- Should a NIJ be created;
- What are the functions and activities that it could and should perform;
- Should it create and develop new programs or consolidate existing programs;
- What kind of structure should it have and how should the membership be appointed;
- What personnel system should be adopted by the NIJ;
- What types of research should the NIJ undertake, how can those activities be evaluated and their findings and results communicated to the justice community.

The questionnaire also asks a series of questions on the scope and functions of a NIJ, its organization and structure, and justice-related research should it become one of NIJ's major functions.

The Director of the Project, F.T. Davis Jr., points out that the Justice Department has proceeded with its examination of possible improvements in the areas of policy and planning, information and statistical services, and state and local financial assistance.





(INTERVIEW, from page 5)

It is going to be difficult on the criminal justice system for a while and certainly on the courts to adjust to it. But I think that is a part of the evolutionary process of a good governmental system. It's been done before; it's been done in many states. My state just did it, and it is causing all kinds of problems. Prosecutors don't like it; defense lawyers don't like it. But, in fact, as they work with it longer it becomes more of a fact of life. They ultimately realize it is not too bad.

I think that is what will happen with the federal criminal law recodification. It is the product of years of work and I believe will be a significant improvement in our federal law.

## SECOND CIRCUIT PANEL FORMED TO FIND SOLUTIONS TO LITIGATION COSTS

As a result of sharply rising costs of prosecuting and defending civil litigation, access to the courts is being restricted to the relative few who can afford it, Chief Judge Irving R. Kaufman (CA-2) said in announcing the appointment of a commission of jurists, lawyers and scholars to study the problem and formulate solutions.

The panel which will be known as the Second Circuit Commission on the Reduction of Burdens and Costs in Civil Litigation, will be co-chaired by Michael Sovern, Dean of Columbia University Law School and Alan Hruska, a New York Lawyer.

## LEGISLATIVE OUTLOOK

A review of pertinent Legislation prepared by the Administrative Office of U.S. Courts.

### ENACTMENTS

P.L. 95-157, an Act creating District Court for the northern Mariana Islands, was signed by the President on November 8. (See story page 8).

On October 28, a bill (S. 168, P.L. 95-144) was enacted which carries out provisions of the U.S. prisoner repatriation treaty with Mexico and Canada. The Act sets up a commission to handle applications for repatriation.

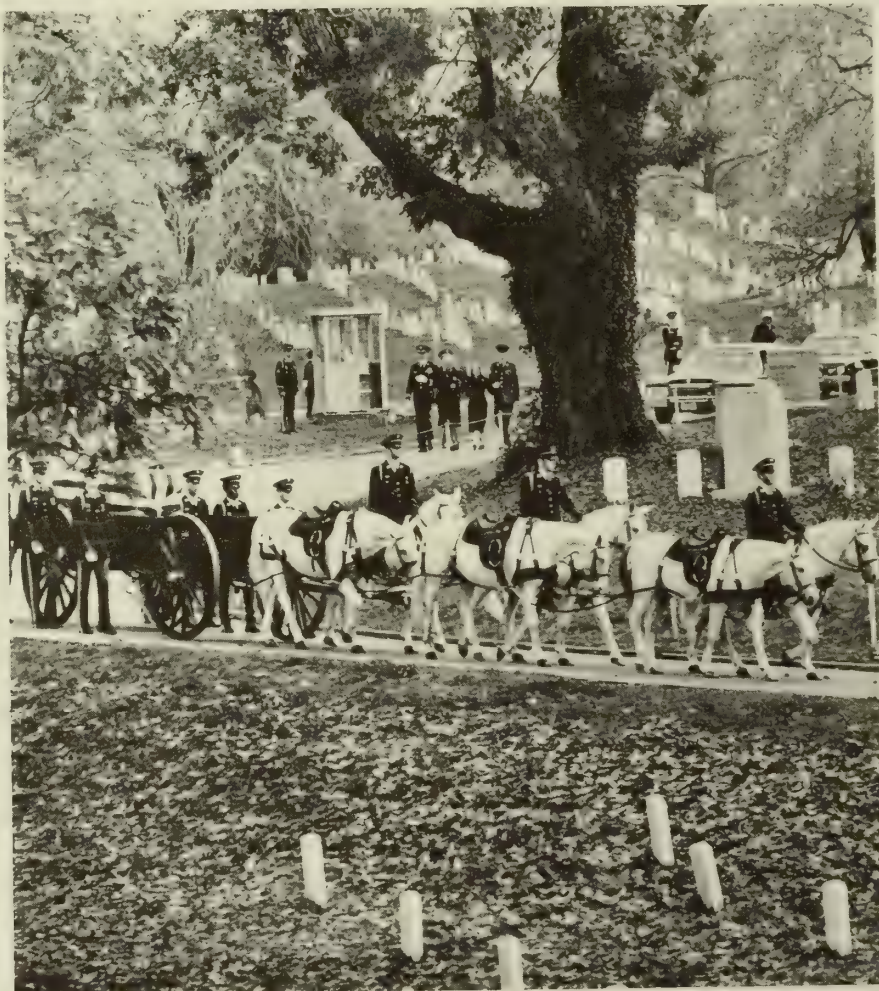
### CONGRESSIONAL ACTION

**Bankruptcy.** (See story page 1)

**Criminal Code.** On November 1, the Senate Judiciary Committee approved S. 1437, the proposal to revise and codify the federal criminal laws.

Among the most significant provisions of the bill are the sections creating a federal sentencing commission, decriminalizing, in part, the possession of small amounts of marijuana by making it a misdemeanor punishable by a fine and providing for expunging the criminal records of persons convicted for the first three infractions.

The controversial legislation was reported after many weeks of markup sessions. Further hearings before the House Judiciary Committee on the companion bill, H.R. 6869, are planned for the recess period. Some of the major new features of the bill as reported relate to the Sentencing Commission which would consist of seven members, a majority of whom including the chairman, would be appointed by the President.



This is the scene at Arlington National Cemetery as Administrative Office Director Rowland F. Kirks was buried with full military honors.



th confirmation by the  
nate, and a minority of whom  
uld be appointed by the  
dicial Conference.

**Consumer Protection.** H.R. 9718,  
e compromise legislation to  
establish a federal office for  
consumers, was removed from  
the House calendar on  
November 1 by Speaker Thomas  
Neill, Jr. (Dem. Mass.). It is  
ected that the bill, in some  
m, will be back in Congress in  
Second Session.

**Customs Clearance.** On October  
the House passed as  
ported, H.R. 8149, a bill  
signed to reform the customs  
clearance of merchandise and  
passengers. Among the major  
changes in existing customs law  
which the bill makes are revised  
duties, and provisions for full  
judicial review of alleged  
violations. The bill is currently  
pending in the Senate Finance  
Committee.

**FTC Enforcement.** On October  
the Senate passed  
islation (H.R. 3816) to  
lengthen Federal Trade  
Commission enforcement  
procedures. The approved  
version does not include a  
provision contained in the bill as  
ported by the Senate  
Commerce Committee to permit  
consumers to file class action  
suits based on FTC rulings.

A similar bill was passed by  
the House on October 13,  
differences in the House and  
Senate versions must be  
olved by a joint conference  
before the legislation can be  
sent to the President.

**Court Interpreters.** S. 1315, the  
islation which would  
establish an interpretation  
service in the federal courts to  
serve non-English speaking  
people and individuals with  
hearing and speech impair-  
ments, was passed by the  
Senate on November 4.

**Court Accommodations.** On  
November 1, a bill (H.R. 2770)  
was passed by the House which  
would amend Title 28 U.S.C. to  
provide accommodations for  
judges of the United States

Courts of Appeals at places  
other than those where regular  
terms of courts are authorized  
by law to be held, if such  
accommodations have been  
approved as necessary by the  
judicial council for the  
appropriate circuit and if space  
is available without cost to the  
Government. The bill, which  
was also passed by the Senate  
on November 4, is currently  
awaiting signature by the  
President.

**Jurors.** Hearings were held on  
September 26 before the  
Senate Judiciary Subcommittee  
on Improvements in Judicial  
Machinery on Judicial  
Conference-sponsored legisla-  
tion to increase the compensa-  
tion and expenses payable to  
federal jurors and to provide  
them statutory protection  
against termination of  
employment because of jury  
duty. The bill, S. 2075, is  
pending in the Subcommittee  
and is expected to be favorably  
reported early in the next  
session of Congress.

Also considered at the  
hearing was legislation (S. 2072  
and S. 2074) urged by the  
Judicial Conference to make  
further improvements in the  
federal jury administration.  
Among the proposals which  
would be implemented would be  
the coverage of all federal jurors  
under the Federal Employees  
Compensation Act in case of  
injuries in the course of their  
service, the abolition of the  
automatic mileage excuse from  
jury service, the redefinition of  
certain terms with respect to  
jury selection by automated data  
processing methods, and  
clarification of the eligibility for  
jury service of one who has been  
convicted of a criminal offense  
but had his civil rights restored.  
These measures are also  
pending in the House Judiciary  
Committee as H.R. 7809, 7810,  
and 7813. The witness on  
behalf of the Judicial  
Conference at the Senate  
hearing was Carl H. Imlay,  
General Counsel of the Admin-

istrative Office of the U.S.  
Courts.

## BILLS INTRODUCED

**Audio-Visual.** On October 19,  
H.R. 9657, a bill to establish  
uniform procedures for the  
procurement, production, and  
distribution of audio-visual  
materials by federal agencies,  
was introduced by Representa-  
tive Edward R. Roybal (Dem.  
Calif.) The legislation would  
create a Federal Audio-Visual  
Commission which would  
supervise and issue regula-  
tions relating to the acquisition  
of audio-visual materials from  
private sector producers for use  
by federal agencies.

**Veterans Appeals.** Legislation  
to establish a Court of Veterans'  
Appeals was introduced in the  
Senate on October 28 by  
Senator Strom Thurmond (Rep.  
S.C.). The bill, S. 2263, is one of  
several recent attempts to  
provide final judicial review for  
decisions issued by the Board of  
Veterans' Appeals. Under the  
proposed bill, cases would be  
heard by the new court on briefs  
and oral argument when the  
matter in issue is a question of  
law. In all other cases, the case  
would be referred to a  
commissioner for a hearing. The  
assistance of federal district  
courts within the jurisdiction of  
a particular inquiry could be  
invoked to enforce subpoenas  
issued by the Appeals Court in  
conjunction with any proceed-  
ing.

**Arbitration.** H.R. 9778, a bill to  
amend Title 28 U.S.C. to  
encourage the use of arbitration  
in U.S. district courts, was  
introduced on October 27 by  
Representative Peter W.  
Rodino, Jr. (Dem. N.J.) Under  
the legislation, the chief judge of  
a federal district court in which  
arbitration is authorized would  
certify arbitrators to serve  
within the judicial district.  
Cases could be referred to  
arbitration where the parties  
had consented, the relief sought

(See LEGISLATION, page 8)



## APPOINTMENTS

Edward H. Johnstone, U.S.  
District Judge, W.D. Ky., Oct.  
13

Harry W. MacLaughlin, U.S.  
District Judge, D. Minn., Sept.  
29

Alvin B. Rubin, U.S. Circuit  
Judge, 5th Cir., Oct. 8

Procter Hug, Jr., U.S. Circuit  
Judge, 9th Cir., Sept. 16

Louis F. Oberdorfer, U.S. District  
Judge, District of Columbia,  
Nov. 1

Hugh H. Bownes, U.S. Circuit  
Judge, 1st Cir., Oct. 31

## ELEVATION

David S. Porter, Chief Judge,  
U.S. District Court, S.D. Ohio,  
Sept. 19

## CONFIRMATION

Elsijane Trimble Roy, U.S.  
District Judge, E.&W.D. Ark.,  
Nov. 1

## NOMINATIONS

Robert F. Collins, U.S. district  
Judge, E.D. La., Nov. 2

John L. Kane, Jr., U.S. District  
Judge, D. Colo., Nov. 2

James K. Logan, U.S. Circuit  
Judge, 10th Cir., Nov. 4

Monroe G. McKay, U.S. Circuit  
Judge, 10th Cir., Nov. 2

Robert S. Vance, U.S. Circuit  
Judge, 5th Cir., Nov. 4

Dec. 1-2 Workshop for District  
Judges (Ninth Circuit), San  
Diego, CA

Dec. 5-6 Judicial Conference  
Advisory Committee on  
Appellate Rules, Washington,  
DC

Dec. 12-13 Judicial Conference  
Advisory Committee on Civil  
Rules, Washington, DC

Dec. 12-14 Seminar for Bank-  
ruptcy Clerks, Atlanta, GA

Dec. 12-14 Seminar for Staff  
Attorneys, New Orleans, LA

Dec. 13-16 Seminar on Crisis  
Intervention for U.S. Pro-  
bation Officers, Dallas, TX

Dec. 15-17 Seminar for  
Bankruptcy Referees, Atlanta,  
GA

Dec. 19-21 Advanced Manage-  
ment Seminar for Probation  
Clerks, Ft. Lauderdale, FL

## DEATHS

Joseph W. Woodrough, U.S.  
Senior Circuit Judge, 8th Cir.,  
Oct. 2

James H. Gorbey, U.S. District  
Judge, E.D. Pa., Oct. 24

Gunnar H. Nordbye, U.S. District  
Judge, D.MN., Nov. 5

(LEGISLATION, from page 7)

was not in excess of \$50,000  
damages, or where the United  
States was a party and it was a

type of action authorized by the  
bill.

**Diversity.** On November  
Representative Robert V.  
Kastenmeier (Dem. Wis.)  
introduced H.R. 10050, another  
bill proposing to abolish the  
diversity of citizenship as a basis  
of jurisdiction of federal district  
courts. This version would also  
abolish the amount in  
controversy requirement in  
federal question cases. The bill  
has been referred to the House  
Judiciary Committee.



## NEW TERRITORIAL COURT WILL BE ESTABLISHED IN MARIANAS

The first new territorial court  
to be established in over  
thirty-five years will be opened  
on Saipan in the northern  
Marianas Islands on January 1.

Currently, there are territorial  
courts in the Virgin Islands,  
Canal Zone and Guam and the  
Marianas court will be the  
fourth in the federal judicial  
system.

In order to assist the new  
judge and court clerk to make an  
efficient beginning, Chief Judge  
Russell E. Smith (D. Mont.) and  
the Clerk of Court for the District  
of Arizona, Wallace  
Furstenau, will travel to Saipan  
and remain throughout most of  
January.

## THE THIRD BRANCH

VOL. 9, NO. 11 NOVEMBER, 1977

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Bulletin of the Federal Courts

Vol. 9, No. 12

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DECEMBER, 1977

## Administrative Office Director, Deputy Director Named

The Supreme Court November 21 selected William E. Foley as Director of the Administrative Office of the United States Courts and Joseph F. Spaniol, Jr. as Deputy Director.

Mr. Foley replaces Rowland F. Kirks who died November 2.

The new Director is a native of Danbury, Connecticut and is married to the former Marguerite M. Pratt. They have seven children. He holds four Harvard degrees; A.B., LL. B., J.M. and Ph.D. During World War II he served in the Navy as a Lieutenant Commander and later joined the Department of Justice where he served for twenty-three years as Chief, Internal Security and Foreign Agents Registration Section, Criminal Division; Executive Assistant to the Assistant Attorney General, Internal Security Division; and Deputy Assistant Attorney General, Criminal Division.

Mr. Foley is no stranger to the federal judiciary since he joined the Administrative Office in 1964 as Deputy Director and has served in that post until his present appointment.

In addition to his duties as Director of the Administrative Office, Mr. Foley also assumes a seat on both the Board of the Federal Judicial Center and the Board of Certification.

Joseph F. Spaniol, Jr. is a native of Columbus, Ohio. He received his A.B. from John Carroll University in Cleveland, Ohio; his LL. B. from Western Reserve University, also in Cleveland; and his LL. M. from Georgetown University in Washington, D.C.

In selecting Mr. Spaniol as Deputy Director, the Supreme Court chose a career employee of the Administrative Office. Mr. Spaniol joined the A.O. as an attorney almost immediately following graduation from law school and later served as General Counsel, Chief of the Division of Procedural Studies and Statistics and for the last seven years he served as Assistant Director for Legal Affairs.

He is married to the former Viola Montz and has eight children. During World War II, he served in the Army.

### HOUSE JUDICIARY COMMITTEE APPROVES 145 NEW JUDGESHIPS

On November 30, the House Judiciary Committee approved the creation of 145 new district and appellate judgeships. This was one more than previously approved by the Senate Judiciary Committee earlier this year.

Of the total, 110 are district judgeships and 35 are courts of appeals judgeships.

Final action on the Omnibus Judgeship Bill will not be taken until early next session.



William E. Foley  
Director, Administrative Office  
of the United States Courts



Joseph F. Spaniol, Jr.  
Deputy Director, Administrative Office  
of the United States Courts





## PROBATION OFFICERS MANDATORY RETIREMENT ACT TAKES EFFECT JANUARY 1

On January 1, P.L. 93-350, enacted July 12, 1974, will go into effect forcing Probation Officers who have reached age 55 or completed twenty years of service, if they are older than 55, to retire.

The legislation made three important changes to the law then in effect regarding Probation Officer retirement:

- The annuity computation rate was increased from two percent per year of service to two and one-half percent for the first twenty years plus two percent for each year over twenty years.

- The employee's deduction rate and the matching agency (the Administrative Office) contribution was increased from seven to seven and one-half percent and the head of the agency was authorized to establish minimum and maximum age limits within which an original appointment may be made to a covered position.

- Effective January 1, 1978, the mandatory separation of an employee eligible for immediate retirement on the last day of the month in which the employee becomes 55 years of age or completes 20 years of service, if then over that age, is required by law. However, the head of the Administrative Office, when in his judgment the public interest so requires, may exempt such an employee from automatic separation until that employee becomes 60 years of age.

At its March, 1975 meeting, the Judicial Conference of the U.S. adopted a resolution that, for the purposes of implementing this Act, "the Director of the Administrative Office, when in his judgment and after receiving the findings and recommendation of the chief judge of the district finds that the public interest so requires,

may exempt a probation officer from separation until the probation officer reaches 60 years of age."

To assist the Director of the Administrative Office in exercising his authority to exempt a probation officer from mandatory separation, the Judicial Conference of the U.S. at its September 1977 meeting approved these guidelines:

- It is the policy of the Judicial Conference that probation officers shall be exempted from mandatory separation when, in the judgment of the Director and the chief judge of the district, the public interest requires such exemption, the following factors are to be considered:

- a. The benefits which will inure to the Government upon exemption.

- b. The degree of difficulty in replacing the employee.

- c. The need for the employee to perform essential service in the time of emergency.

- d. Any exemption shall be limited to one year at a time.

The request for exemption and any subsequent request for extension of exemption should be sent to the Director and should specifically detail why the exemption/extension is in the public interest and should also detail the alternatives to exemption which the court has considered and the reasons they have been determined unsuitable.



## TWO DISTRICT JUDGES OFFER SUBSTITUTE JURY SELECTION TECHNIQUE

Instead of specifically designating alternate jurors at the outset of the trial at least two District Judges have, with the consent of counsel, been deferring the designation of alternate jurors until the completion of the judge's charge to the jury.

Chief Judge Jacob Mishler and Judge George C. Pratt (E.D. N.Y.) have both drawn up forms

of stipulation which counsel may sign which offer substitute procedures in lieu of the statutory requirements in FRCrP 46(b) and FRCrP 24(c). The stipulation sets out four points of agreement by the trial judge and counsel for the parties. These are:

1. Upon selection of the jury two additional jurors shall be chosen, with plaintiff and defendant[s] each entitled to one additional peremptory challenge.

2. No juror shall be designated as "alternate" until after the court's charge.

3. If the entire panel remains to the end of the charge the plaintiff and defendant[s] shall each have one additional peremptory challenge, with plaintiff challenging first. The persons thus challenged shall be deemed "alternate" jurors and dismissed at that time. The members of the panel shall not be informed that it is the parties who have designated the "alternate" jurors.

4. If one member of the panel is unable to continue to the end of the charge then one other "alternate" juror shall be selected by lot.

The judges using this procedure report that both prosecution and defense have said they are satisfied with the procedure especially since it allows them, at no extra cost or delay, to make a judgment after they have had an opportunity to observe the jury during trial. Also reported by the judges is the fact that this device tends to keep all of the jurors, including those ultimately designated as alternates, interested and alert throughout the trial.

*As innovative techniques and procedures come to our attention, we will report them. The Third Branch. For details of the development and use of these procedures, readers are invited to communicate directly with the judicial officers involved or the Federal Judicial Center.*



## MAJOR SENTENCING INSTITUTE HELD AT MORGANTOWN, W. VA.

A major Sentencing Institute was held this fall at Morgantown, West Virginia in which 43 federal judges from both the Second and Seventh Circuits participated.

During the first day the attendees had an opportunity to tour the Bureau of Prisons facility for youthful offenders at Morgantown. The second day was devoted to a panel discussion on sentencing in which Morris Abrams presented a paper on "Social Risk Sentencing: A New Approach." Joining Mr. Abrams on the panel were Harold Tyler, former Deputy Attorney General and federal judge, and Franklin Moring, Director of the Center for Studies in Criminal Justice at the University of Chicago Law School.

Carl Imlay, General Counsel of the Administrative Office, described the sentencing revision of the new federal criminal code which may be enacted next year. He mentioned that the law requires the creation of a sentencing commission designed to set sentencing guidelines. This commission, he told the attendees, will be composed of seven members—four appointed by the President and three by the Judicial Conference.



## The Third Branch

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## MAGISTRATES HOLDING HEARINGS IN MEXICO ON PRISONER CASES

On November 7, a special meeting was held in San Antonio, Texas to allow representatives of the Administrative Office's Magistrates Division, Administrative Office's Magistrates Division, the Bureau of Prisons, Administrative Office's Criminal Justice Act Division, and the Department of Justice to discuss the problems associated with holding magistrate court hearings throughout Mexico to verify whether American prisoners now in Mexican jails

or prisons desire to return to the U.S. to serve the remainder of their terms.

Federal public defenders and U.S. magistrates also attended.

There are from four hundred to six hundred U.S. inmates in Mexican institutions. The magistrates will hold their first hearing in early December in Mexico City and then hold other hearings in several other locations in Mexico.

This is believed to be the first time in the history of the federal judiciary that a significant number of court officers have held court hearings in a foreign nation.

## DISTRICT COURT MICROFILMING ALL OF ITS RECORDS

The U.S. District Court for the Western District of Louisiana began microfilming all of its official case records on January 1 of this year in order to fill the need for simultaneous access to the records at the headquarters office as well as at several divisional offices.

This is necessary because the geography of the District, which is a 250-mile by 150-mile rectangle, divided into six divisions with the headquarters division at the extreme northwest section of the District.

Prior to the institution of simultaneous microfilming of the records, it was necessary to mail records as needed to the various District divisions. As a result, many case records made several round trips from headquarters to the various divisions which drained manpower and money from the District and caused delays.

Today, immediately prior to docketing, the case file is microfilmed and a master copy is kept in the headquarters division. The full record is then sent immediately to the judge who is assigned the case.

The Clerk of the Court, Robert H. Shemwell, said the microfilm

is kept at the headquarters office enabling that office to docket the case, prepare statistical reports and set calendar dates. Moreover, once the case is completed, plans are to substitute a copy of the microfilm for the official record which will be destroyed.

While microfilming was not initially intended to be used to save space in the Clerk's Office, a tremendous space saving has been realized: Filings for 1977 occupy only 365 square inches while the files themselves would fill eight filing cabinets. A full docket book occupies only 13 microfiche.

In addition to saving space, security has also become an important factor. In the past, when a case record was lost in the mails or when the document was removed from the case file, an insurmountable problem arose. Today, the microfilm section at headquarters need only print a copy of the microfilm.

"It is my feeling that microfilm definitely has application in the courts," Mr. Shemwell said; but he added the total "extent of its usefulness as yet remains undefined."



# A VISITATION PROGRAM FOR



Judge William J. Campbell

The federal courts can take pride in the leadership they have given to judicial education, an area that is enjoying increasing support from judges — state and federal — across the country. At its June meeting, the Judicial Center's Board, inspired by its Chairman, the Chief Justice, and Judge Walter E. Hoffman, then its Director, considered the growing interest among the federal judiciary for individually structured orientation programs for new judges and recommended the creation within the Center of a visitation program for newly appointed district judges. The Chief Justice then requested that I prepare this article on the subject.

We all recognize that federal judges come to their new positions with a wide variety of backgrounds. A new judge coming from a corporate law practice may wish special orientation on processing criminal cases. A new judge, quite familiar with litigation in state courts, may wish to concentrate a few days' attention on the federal civil

*By Judge William J. Campbell,  
(N.D. Ill.) Seminar Chairman  
Emeritus, Federal Judicial Center*

non-jury trial. This diversity argues for specially tailored programs, designed to be of maximum benefit to each new judge.

Furthermore, a carefully constructed, individually tailored, orientation program at the outset of a judicial career can not only fill particular needs. It can also influence a judge's growth pattern remarkably. The Chief Justice has pointed out that if a new judge, though long awaited by his new colleagues, spends his initial weeks in orientation rather than judging, it will reap a district concrete benefits of improved case processing in the weeks and months after orientation. The Judge's heightened skill and understanding, in the short range as well as the long range, will more than compensate for the two-week postponement of the time he begins to try cases.

I have been especially aware of this need from my vantage point as Chairman of Seminars and Workshops for the judiciary and from my good fortune of being in frequent contact with almost every federal trial judge. Of course, the various districts, and their chief judges especially, recognize the need for specially tailored orientation programs and particular districts have developed excellent programs that can help guide our efforts to develop a program for all federal judges who wish it.

I am proud that the program of instructor judges in the Northern District of Illinois is one of these; it is a program that I knew was needed if for no

other reason than my own experience. My "post-induction orientation" took place when, after an impressive induction ceremony, the Senior Judge (that's what the Chief was called in 1940) took me into his chambers and flippantly tossed me a sheaf of papers listing over seven hundred cases as a calendar. He casually observed that I now find myself in a courtroom where I could at begin a call of the calendar since several cases thereon had not been called in over ten years. Now, as I devote myself in "retirement" to judicial education, I often think back that day and consider how far we have progressed in orientation and training and how much further we must go to meet the challenge.

## A Proposal

In this spirit, I respectfully offer for the consideration of the Board and of the entire judiciary a proposal that can build on existing programs of new-judge orientation. Specifically, I suggest that all newly appointed judges have the opportunity of an individually designed orientation program with experienced "instructor judges. A new judge needs orientation to home district practices from an experienced judge in the home district, and he or she could also benefit from spending some few days with instructor judges for out-district orientation. These out-district instructor judges could come from a diverse group of 20 to 30 of the practicing masters in the particular discrete areas where new judges most need help in "filling out" their preappointment experiences and the instruction provided in their home district.

There should be an emphasis on the routine of the new



# NEWLY APPOINTED JUDGES

and acquiring the basic techniques to manage it. Simple procedures, a matter of habit to experienced judges, will often be foreign to new appointees.

Two weeks of intensive instruction would appear necessary. Of course, the details of this proposal can be modified as various chief judges, new judges, and the judiciary put it through the necessary period of preliminary trial and error."

My proposal is based on several assumptions: (1) new judges' orientation needs are personal and unique; (2) new judges learn new practices quickly but, once established, have difficulty changing them; (3) new judges can best master the mechanics of their new role in a short and intensive learning session; and (4) experienced judges, as masters of various aspects of judicial proceedings, should be the teachers of those techniques.

The administrative burdens of designing a program for each judge are crushing and complex and will grow even more demanding with next year's anticipated influx of new judges. Only because we can turn to the Federal Judicial Center for the necessary coordination and statistical support, are we to consider seriously any proposal for an augmented individualized instruction.

In short, although the Judicial Conference of the United States and the Conference of Metropolitan Chief Judges could sponsor and encourage the project, the Federal Judicial Center is the appropriate organization to work closely with the chief judges and new judges in helping them develop a program. It has ready access to information about all federal judges and manages other important programs for the federal judiciary.

## Particular Steps

An individualized program could proceed as follows:

### Planning the program

1. The particular needs of the new judge and particular ways to meet them should be explored carefully with the new judge and his chief judge. The Center, through the Director and senior staff, in coordination with the respective chief judge, could explore with the new judge those areas in which he would be subjected at a particular time. Achieving the right combination is a delicate task that the Federal Judicial Center, with its overview of the entire system, is especially well-equipped to coordinate.

A diversity of judicial styles and procedural techniques must be represented in the group of instructor judges. No single mold can be appropriate for all. To expose new judges to only one judicial style could well limit their development in one direction and be unhealthy for the entire judicial system. Both extreme eccentricity and extreme orthodoxy in the courtroom manner of our federal judges are to be avoided in an orientation program. The instructor judges, from within and without the district, should complement each other. Diversity, in turn, will help the judge and enable him to extract the best elements from various styles and perhaps even bring back some constructive criticism to established practices in the home district or circuit.

Thus the "out-of-district" instructor judges should be selected from across the country, with each circuit and each of the larger districts represented. Obviously, the size and membership of this group can and will change as new

needs are pinpointed and new perspectives developed.

### 2. Two-week schedule of observation and instruction.

Once the judge enters into duty, the first full week could be spent with the instructor judge within his own district. Establishing a sound relationship here is very important, since the in-district instructor judge can be a continuous source of assistance and support for the new judges for some time after they assume the bench. Numerous questions will come to the mind of a new judge once he starts processing cases, and he will benefit from having someone to whom to turn for assistance without embarrassment. Our experience in Chicago is that an in-district instructor judge can perform a valuable service in this regard.

For the first three days of the second week, new judges could be assigned to the instructor judge outside their district.

For the last two days of the second week, the new judges will return to their own district and their original instructor judge.

## Conclusion

Finally, on the last day, new judges and their instructor judge would meet with the chief judge of their district for an introduction and briefing, as well as a welcome to the district to overcome some of the natural shyness that sometimes attends the initial relationship between chief judge and new judge.

The division of time into five, three and two-day sessions will allow exposure to numerous aspects of the new role. Appropriately, the first and longest session will expose new judges to a normal judicial week's proceedings. Spending the next

(See JUDGES, page 6)



(JUDGES, from page 5)

three days with another out-of-district instructor judge will provide a second point of view and a basis for comparison, as well as assistance on particular points of need. Exposure to the second judge's technique can be followed with discussion of differences and new ideas. New judges will then have a full day to again observe in-district courtroom procedure. Obviously, the details of the program are not set in concrete. This allocation does, however, appear a reasonable basis on which to begin the programs.

### Orientation Subjects

The exchange between the new judges and the instructor judges should focus on the common procedures and practices of a federal district court judge, including court calendar, motion call, discovery procedures, preliminary hearings, pretrial conferences, voir dire examination, judgment and sentencing, probation and even how to get the jury into and out of the courtroom. New judges should sit on the bench with their instructor judges during at least one trial. Oral and written court forms, benchbooks and other "how to do it" materials should be explained to the new judges. The in-district instructor judge should also arrange for the new judge to visit the institutions in the new judge's district in which criminal defendants are housed before and during trial and to which they will likely be sentenced upon conviction.

This program can provide new federal judges with a personalized orientation to the federal judiciary. The visitation program offers clinical experience during an intensive time period, providing immediate benefit that the periodic group seminars cannot be expected to provide. The new judges will assume the bench with greater confidence in their own ability to perform their duties.

The Center might develop guidelines and a "new judges' checklist" for the orientation program, reflecting the views of chief judges and of other experienced judges concerning the topics to be discussed by the new judges and their instructor judge and the procedures that the new judge should follow in various court actions. The Center could also compile a library of materials and tapes of particular court proceedings, such as model suppression hearings, to be loaned out to newly appointed judges upon request.

### Other Suggestions

The new judges' secretaries and such support staff as their minute clerks might spend two or three days with the new judges during their visits with the instructor judges, particularly if they are visiting judges situated near their new offices. The staff counterparts in the instructor judges' offices could demonstrate many routine tasks, such as record keeping, the filing of forms as well as other administrative duties. A trained staff is a tremendous help to a new judge.

Finally, perhaps within their first three months on the bench, the new judge should sit as an observer or panel member by designation on the respective court of appeals. This need be only for a few days but should include studying briefs, hearing oral argument and participating in conferences. This recommendation stems from my belief that federal district judges can better understand the appellate process by observing it firsthand. The understanding gleaned from appellate observation might soften the blow of the first reversal and even result in fewer reversals for new judges. In any event, visiting the court of appeals would be informative and provide a nice introduction between the new judges and the circuit court judges.

Within the first year, a federal district judge should attend the Center's one-week seminar for newly appointed judges. The enthusiastic approval expressed by all who have had this course commands its continuance. However, it could be modified to reflect the new judges' individual orientation experiences. Moreover, the seminar may in some situations provide a special opportunity for the new judge to confront as his professor the judge whom he has visited. This will produce a more beneficial exchange of ideas based upon the new judge's experiences on the bench after the visitation program and prior to the seminar. Indeed, the recording of these seminar sessions and study thereof by planning groups should result in continuing improvement of the seminars.

The foregoing is my proposal, respectfully invite the comments, criticism and advice of the entire federal judiciary. Effective training of new judges is primarily and historically the obligation of the entire judiciary. The Judicial Center can succeed in its statutory duty of judicial training and continuing education only by and with the help of the judges. May we please have yours to the effect that together we produce the highest quality of justice at the best possible speed with the lowest possible cost?







The Chief Justice

## HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

Before us again is a Christmas Holiday Season, a time when contemplation is in order to remember how we are blessed even if many problems remain. As we conclude a year, we need also to ready ourselves for what lies ahead. All in all it is an excellent time to reflect upon the events of the year closing.

The Judiciary effectively fulfilled its mission, despite increasing burdens imposed by complex cases and constantly mounting caseloads. What we lacked in judgepower, its members and supporting staffs made up for through hard work, dedication and more new and better methods.

This year saw a new President assume office, and with him came the first Attorney General and Solicitor General in modern times who had long served as federal judges and thus have intimate knowledge of the needs of justice. This is bound to help in developing yet more ways to improve justice.

We can join with our judicial colleagues of the state courts that the dream of the National Center for State Courts will become, literally, a concrete reality as the major instrument for better and swifter justice in the states. The first quarter of the new year will see the dedication of its splendid national headquarters at Williamsburg, Virginia where the seed was planted only six short years ago. We wish them well on this significant milestone and pledge our support for their work.

Our country is at peace and the prospects for a continuation of this peace are good. Nations which have known war in the recent past, far more than Americans, are contemplating peace with a renewed seriousness. Particularly, we should give thanks to our own President's pursuit of peace and those farsighted statesmen of the Middle East who have shown courage, vision and concern to preserve peace in that area of the world so dear for all to whom the Christmas Season has very special meaning. The prayers of all must accompany those who are peacemakers.

Looking back, we see ample cause for satisfaction, and as we look ahead, we can do so with confidence as well as for continuing concern that prompt justice be within reach of all.

Mrs. Burger joins me in wishing you and yours a pleasant Holiday Season and the best during the coming year.

*Warren E. Burger*



## SENTENCING STUDY CONCLUDED

The Federal Judicial Center has released an 83-page report entitled: "An Evaluation of the Probable Impact of Selected Proposals for Imposing Mandatory Minimum Sentences in the Federal Courts," (F.J.C. R-77-3).

The report presents the findings of research undertaken by the Center's Research Division in cooperation with the Probation Division of the Administrative Office of the U.S. Courts.

The study was aimed at generating data on the probable impact of various proposals, introduced in the Ninety-fourth and Ninety-fifth Congresses, for imposing mandatory minimum sentences in the federal courts. Fiscal 1976 data on sentences imposed for selected offenses covered by six major bills were examined to determine the frequency with which federal judges imposed sentences that would have conflicted with the bills' provisions.

The report concludes that in most areas studied, the bills proposing minimum sentences would have had little or no effect on sentences imposed in federal courts, if the bills had been in effect in fiscal 1976. In some areas, however, such as transactions in opiates, bank robbery, and aggravated assaults, certain of the bills would have considerably narrowed the discretionary range actually utilized by sentencing judges in that year.

To assure the certainty of punishment sought by advocates of legislative reform of the sentencing process, the study concludes that parallel limitations on prosecutorial discretion should accompany limitations on judicial sentencing discretion.





## FJC RELEASES REPORT ON VOIR DIRE

The Research Division of the Federal Judicial Center has completed a study which examines the practice of the various federal district courts relating to the examination of prospective jurors.

A 32-page report, "Conduct of the Voir Dire Examination: Practices and Opinions of Federal District Judges," (FJC-R-77-7), resulting from that study recommends that Rule 47(a) of the Federal Rules of Civil Procedure not be changed to permit oral participation by lawyers as a matter of right.

"The current form of the rule," the report points out, "is best adapted to meeting the diversity of opinions and practices in the ninety-four federal districts."

At present Rule 47(a) and the virtually identical Rule 24(a) of the Federal Rules of Criminal Procedure, afford the trial judge discretion to forbid or allow direct oral participation by lawyers in jury selection.

The issue of whether these rules should be amended came into sharp focus when the American Bar Association in 1976 recommended that attorneys be allowed, as a matter of right, to question jurors directly.

At the request of the Conference of Metropolitan Chief Judges, the Center conducted a thorough examination of current voir dire practices in federal courts and analyzed the issues involved in such a proposed rule change.

A survey of all district judges in January 1977 produced an 87 percent overall rate of return and pointed out that about three-fourths of the judges conduct voir dire without direct participation by counsel. It also showed that judges vary in their perception of the appropriate roles of the judge and counsel in the voir dire process. The judges generally agreed that their role

is to insure selection of an impartial jury. Thirty percent saw the attorney's primary role as that of protector of the client's interest.

While recommending retention of the judicial discretion currently provided by Rule 47(a), the report adds that conducting the voir dire examination in a perfunctory fashion forfeits the opportunity now given by the rule to impanel an impartial jury.



## STATE-FEDERAL

**Kentucky.** As a result of a disaster in Kentucky over 75 damage cases have been filed, 40 in the U.S. District Court and at least 35 in a state court. To avoid duplication of paper work and save the time of counsel and the courts U.S. District Judge Carl B. Rubin (S.D. Ohio) and State Circuit Judge John A. Diskin jointly heard motions in these cases.

Since the question of whether the jurisdiction of the state judge could extend beyond the geographical boundaries of his circuit, Judge Rubin agreed to sit in Newport, Kentucky, which is in Judge Diskin's county.

At issue in the motions was the doctrine of sovereign immunity. Argument took approximately two hours.

**Oregon.** At a recent State-Federal Judicial Council meeting the council went on record as favoring elimination or reduction of diversity jurisdiction cases filed in federal courts. The Council has taken similar action on at least two previous occasions. Diversity cases now represent over nine percent of the federal court caseload in the state. Were these cases to be transferred to the state courts they would not make a significant impact on those courts, considering the large number of state judges who are available to try them. With rare

exceptions these cases actually involve state law, rather than federal, and therefore are "fully within the competence of state judges."

**New Jersey.** The U.S. District Court in conjunction with the Association of the Federal Bar, the State of New Jersey, held their third conference last month. New Jersey is the only state which convenes such a conference, which is open to all members of the bar. Discussed were proposals for grand jury reform, recent developments in the Federal Rules of Evidence and alternatives to mounting litigation. The highlight of the meeting was a luncheon program which featured Chief Judge Lawrence A. Whipple and Chief Justice Richard J. Hughes discussing the state of the federal and state judiciaries.



## CLERKS ASSUME RESPONSIBILITY FOR DISBURSING FUNDS

Effective October 1, all clerks of federal courts assumed the responsibility for disbursing appropriated funds for the operation and maintenance of the courts. The U.S. Marshals had this responsibility in the past.

The Clerks Division of the Administrative Office took the anticipated new responsibility into account in preparing its forecast of personnel needs during fiscal 1978.

Regulations and procedures for the disbursing of funds were sent to all Clerks prior to the changeover which took place with the close of business on September 30. The Administrative Division of Financial Management prepared a chart which accounts for all the financial activities of the Clerks' Office including registry funds, the deposit fund account, general and special fund receipts, and appropriated funds.



## SENATE JUDICIARY COMMITTEE APPROVES NEW CRIMINAL CODE

On November 2, the Senate Judiciary Committee approved S. 1437, the long-awaited and much-debated new Federal Criminal Code. A companion measure is awaiting action in the House Judiciary Committee.

Among the most significant provisions of the bill are the sections creating a federal sentencing commission which would consist of seven members, a majority of whom, including the chairman, would be appointed by the President with confirmation by the Senate, and a minority of whom would be appointed by the Judicial Conference.

The Commission would be composed of both full-time judicial and non-judicial members, the latter being paid at the salary rate of circuit judges. Members who would serve six-year terms could be removed by the appointing or designating authority only for malfeasance in office. The commission would issue sentencing guidelines and "general policy statements" relating to sentencing, for the sentencing judge to follow in prescribing the sentence and for the Parole Commission to follow with respect to early release and parole. Promulgation of such guidelines are made subject to Administrative Procedure Act rulemaking requirements of 5 U.S.C. §553. The Commission must report its guidelines to Congress and they take effect 180 days after the Commission reports them.

The defendant may file a notice of appeal for review of a final sentence if it includes a greater sentence than provided in the guidelines or has a more severe provision for early release than is provided in the guidelines. Conversely, the government may appeal if the sentence is less, or the early

release provision too lenient (early release eligibility will, under this bill, be specified in the felony sentence; "parole" as redefined will be a period of supervision in addition to the sentence). Sentences reached through plea bargaining are excepted from review.

Where the Parole Commission denies early release for which the prisoner was otherwise eligible in accordance with the sentence, the prisoner may appeal in writing to a National Appeals Board; if early release is granted inconsistent with the guidelines, the Attorney General may appeal.

Parole may be granted whether or not a prisoner has been released early or has served his full term. Both the prisoner and the Attorney General may take a written appeal to the National Appeals Board if the terms or conditions of parole are inconsistent with the Sentencing Commission's guidelines.

Another change would be to allow either a defendant or the government to petition for leave to appeal an order of a district court granting or denying a motion to correct a sentence pursuant to Rule 35(b)(2). Rule 35(b)(2), as amended by the Code, would allow a judge to correct a sentence imposed as a result of an incorrect application of the Sentencing Commission's "sentencing guidelines or policy statements" within 120 days after the sentence is imposed.

Rule 35 is also amended to allow a judge to correct a sentence imposed in an illegal manner within 120 days after sentence is imposed or to correct a sentence on remand when it is determined on appeal that the sentence is "clearly unreasonable" with regard to the Commission's guidelines. However, the present power merely to "reduce" a sentence is deleted.

In reviewing sentences the court of appeals will consider the record, as it is designated, the presentence report and the information submitted during the sentencing proceeding. In reviewing the record the court shall determine whether the sentence is "clearly unreasonable," having regard for various factors set forth in Part III of the Code and for the reasons set forth in §2003(b) for the particular sentence. If the court determines that the sentence is "clearly unreasonable," it shall state specific reasons for its conclusions, and remand for a lesser sentence (on defendant's appeal) or a greater (on the Government's appeal), for further sentencing proceedings, or impose a different sentence. If it determines that the sentence is not unreasonable, it shall affirm.

The bill would allow parole only in exceptional circumstances and, as a result, the present parole system would be significantly changed.

The 400-page bill has been the product of dispute between liberals and conservatives in the Congress for over 11 years but this year a liberal-conservative coalition formed by Senators Edward Kennedy and John McClellan reduced friction. Floor action is expected early in the next Session of the Congress.

The bill is seeking to rationalize more than 3,000 federal laws. Representative James R. Mann, Chairman of the House Judiciary Subcommittee on Criminal Justice, said he was "optimistic in the belief that the recodification of the Federal Criminal Laws could be enacted next year." His Subcommittee will meet before the next Session to study the bill in order to be ready to hold hearings when the Session opens.





# GO AROUND JUDICIAL CALENDAR

- Jan. 5-6 Judicial Conference Subcommittee on Federal Jurisdiction, Savannah, Ga.  
 Jan. 11-13 Judicial Conference Subcommittee on Judicial Improvements, New York City.  
 Jan. 16 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, D.C.  
 Jan. 19-20 Judicial Conference Criminal Justice Act Committee, San Francisco, Calif.  
 Jan. 23 Judicial Conference Subcommittee on Supporting Personnel, Washington, D.C.  
 Jan. 23-24 Judicial Conference Probation Committee, Carmel, Calif.  
 Jan. 23-24 Judicial Conference Jury Committee, Coronado, Calif.  
 Jan. 26-28 Judicial Conference Review Committee, Key Biscayne, Fla.  
 Jan. 30 Judicial Conference Magistrates Committee, Key West, Fla.  
 Jan. 30-31 Judicial Conference Advisory Committee on Judicial Conduct, Key Biscayne, Fla.  
 Feb. 1 Judicial Conference Joint Committee on Code of Judicial Conduct, Key Biscayne, Fla.

# PERSONNEL

## APPOINTMENTS

- Thomas A. Ballantine, Jr., U.S. District Judge, W.D.Ky., Nov. 7  
 Nicholas J. Bua, U.S. District Judge, N.D. Ill., Nov. 4  
 Eugene H. Nickerson, U.S. District Judge, E.D. N.Y., Oct. 26  
 Charles P. Sifton, U.S. District Judge, E.D.N.Y., Oct. 26

## NOMINATIONS

- George C. Carr, U.S. District Judge, M.D.Fla., Nov. 21  
 A. David Mazzone, U.S. District Judge, D.Mass., Nov. 21  
 Paul A. Simmons, U.S. District Judge, W.D.Pa., Nov. 22

## CONFIRMATION

- Monroe G. McKay, U.S. Circuit Judge, 10th Cir., Nov. 29

## DEATHS

- James R. Durfee, Senior Judge, U.S. Court of Claims, Oct. 29  
 Gerald McLaughlin, U.S. Senior Judge, CA-3, Dec. 6,

## ELEVATIONS

- Damon J. Keith, Chief Judge, U.S. District Court, E.D. Mich. to U.S. Circuit Judge, 6th Cir., Nov. 22  
 Cornelia G. Kennedy, Chief Judge, E.D. Mich., Nov. 22



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## THE THIRD BRANCH

VOL. 9, No. 12 DECEMBER, 1977

## THE FEDERAL JUDICIAL CENTER

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## NATIONAL INSTITUTE OF JUSTICE PROPOSALS ANALYZED

Recent months have seen renewed interest in creation of a federal agency called a National Institute of Justice. Proposals for a NIJ, although they use the same title, vary greatly among themselves as to the organization and functions of such an institute.

What follows is a summary of the major proposals. Although one of them seems to contemplate replacing the Federal Judicial Center or the Administrative Office, an NIJ might well affect the administration of justice in the federal courts.

Some of the major questions to be resolved are: (1) Should an NIJ be a component of an existing agency or be autonomous? (2) Should it consolidate some or all existing justice agencies? (The President's Reorganization Project has identified 16 "justice research centers" within the Executive Branch.) (3) Should it award action funds to state and local agencies? Conduct research? Gather and maintain justice statistics? (4) Should its research be civil and criminal? Could research be on the basic causes of behavior and/or applied research on the efficacy of proposed solutions? How independent should be the administration of the research program?

The discussion below does not review all NIJ proposals.

The President's Reorganization Project may recommend some form of NIJ. The Reorganization Project has written to all federal judges soliciting their views on federal justice system improvement activities."

### PROBATION OFFICERS TO STUDY BRITISH METHODS

Nine probation officers from the U.S. District Court for the District of Columbia will spend 30 days each in London observing the activities of their British counterparts.

The program was arranged by the District of Columbia Probation Office with the Inner London Probation and Aftercare Service. The first three probation officers will leave on February 20 and remain in London for a month. While there, they will be attached to a particular region within London and the regional officer on the London staff will be responsible for the general oversight of their activities.

Each officer will maintain a log of his activities so that a report can be prepared for the use of the Probation Division of

### REPORT OF FALL MEETING OF JUDICIAL CONFERENCE ISSUED

The Report of the Proceedings of the Judicial Conference of the U.S. which were held in mid-September, 1977 was recently published.

Here are some of the more significant actions of the Judicial Conference. [A complete report is available from the Federal Judicial Center Information Service.]

The Report of the Director of the Administrative Office of U.S. Courts revealed that during the past year, filings rose in the courts of appeals. In the year ending June 30 new case filings rose over the prior year by 3.9 percent. The new filings were 63.9 percent greater than in 1970.

In the district courts new case filings in civil litigation remained relatively stationary. There were fewer prisoner suits, a substantial decrease in petitions for black lung benefits, land condemnation and ICC regulation cases while increases were noted in civil rights filings, copyright, patent and trademark suits and in the foreclosure of federally mortgaged property.

The number of felony and misdemeanor cases in the district courts dropped by more than eight percent during 1977. There was a marked decrease in the number of robbery and



(NIJ, from page 1)

### The Chief Justice

To stimulate thought, The Chief Justice suggested as early as 1972 before the American Law Institute that Congress might create an NIJ, to be national in scope and not in the exclusive control of judges and lawyers. The NIJ would give technical assistance, on a consulting basis with the National Center for State Courts, on problems facing the state courts. The Chief Justice believes that the Institute should have the resources and authority to make grants for court improvements, somewhat like the Law Enforcement Assistance Administration. Regardless of precise design, the management of the Institute should be broadly representative and operate with a small staff. It should be viewed primarily as a grant organization.

While the Chief Justice has endorsed the concept of an NIJ, he has warned that the Institute should in no way encroach upon the autonomy of the states, which is the bulwark of our system of federalism. As well, the tasks of the Institute must not be such that they overlap the efforts of existing organizations. Furthermore, he has stressed that the Institute should avoid policies that tend to regiment the states; ample room for experimentation of new procedures should remain. Simply, the Chief Justice would say, the two aspects of the judiciary (state and federal) must function together, each with an eye to the needs and purposes that the other is designed to serve.

### Department of Justice

Much current interest in an NIJ stems from criticism of the Law Enforcement Assistance Administration, established by Congress in 1968 within the Justice Department (1) to provide funds to non-federal criminal justice agencies; (2) to fund justice research through its

National Institute of Law Enforcement and Criminal Justice (NILE); and (3) to support various national justice related projects (such as its core grants to the National Center for State Courts).

Last November, Attorney General Bell proposed that the President "abolish LEAA and create a new organization to be called the National Institute of Justice," headed by a Director appointed by the President with Senate consent and serving at a salary level comparable to the FBI Director.

This NIJ would include five offices and consolidate many Departmental activities. Major units would be (1) a Bureau of Justice Statistics, to include current LEAA statistical functions and others "as may be delegated by the Attorney General," which are to include civil and criminal judicial statistics, both state and federal; (2) an Office of State and Local Assistance, to distribute block grants to the states, but with less stress on criminal justice planning; (3) a Justice Research and Development Institute, basically for applied research, in the belief that "research and action activities need to be routinely linked... so that ... appropriate action program needs affect research priorities" and vice versa; and offices of (4) Community Anti-Crime and (5) Juvenile Justice. The emphasis of the proposal is on criminal justice activities, although there is reference to the need for research on civil justice.

### American Bar Association

In a December letter to the President's Reorganization Project, President Spann reiterated the ABA's 1974 endorsement of a small NIJ outside the Department of Justice, to sponsor basic and applied research on, and propose improvements in, "the functioning of the justice system in all its aspects," civil, criminal, administrative, and regulatory, at the national, state, and local

levels. While the ABA's N proposal looked favorably including a justice statistics bureau and other research institutes (primarily those not in the Department of Justice), preferred not to have the NIJ distribute grants, fearing that the research program could be tainted by the political pressure that a grant program might feel.

Research independence also led the ABA to propose an independent NIJ, whose budget would not go through the Office of Management and Budget, would be governed by a Presidentially-appointed and broadly representative 9-to-15 member Board of Trustees who in turn would select and recommend a Director. The Board, perhaps assisted by a considerably larger advisory council, would set research priorities, but the Director "using peer review [i.e., having panels of academic experts evaluate research proposals and other techniques]" would award research grants and contracts for "the great bulk of research... so as to utilize the best minds available and avoid the large bureaucratic structure."

### Congressional Proposal

The House Science and Technology Committee is charged with House oversight of the entire federal research and development effort. A subcommittee on Domestic and International Scientific Planning, Analysis, and Cooperation recommended the NIJ last November. The proposal drew heavily on the recommendations of a panel of the National Academy of Sciences, which had evaluated LEAA's National Institute of Law Enforcement and Criminal Justice (NILE) at the agency request. The Subcommittee accepted the panel's view that NILE's research integrity had been compromised by its close ties to LEAA action needs, producing a "mediocre research record."

The Subcommittee recommended



## JUSTICE DEPARTMENT RELEASES PRELIMINARY REPORT ON ARBITRATION, USE OF MAGISTRATES

The Justice Department's Office for Improvements in the Administration of Justice recently conducted an in depth series of telephone interviews with 67 percent of the Chief Judges of federal district courts to discover what mechanisms have been adopted for improving access to the courts, especially in civil matters.

Of the courts surveyed, most have adopted alternative procedures for handling civil cases. For example, 78.9 percent have adopted mandatory pretrial conferences, and 77.5 percent are using magistrates for preliminary hearings. Few districts, 8.5 percent, have used arbitration as an alternative for civil cases.

When asked why they had adopted alternative procedures, each Chief Judge indicated that the primary reason was to

(See ARBITRATION, page 5)

### LAW DAY: MAY 1

This year's theme for Law Day will be "The law: *your* access to justice." Organizations wishing to observe Law Day are urged to contact the American Bar Association, Law Day U.S.A. Observance, 1155 East 60th Street, Chicago, Illinois 60637 for further information and materials which will be of assistance in planning programs.

Effective January 23, the National Center for State Courts will be headquartered at 300 Newport Ave., Williamsburg, Virginia 23185 and its new telephone number will be 804-253-2000.



RICHARD H. DEANE

### NEW A.O. ASSISTANT DIRECTOR FOR PLANS AND ANALYSIS NAMED

The Director of the Administrative Office of U.S. Courts, William E. Foley, announced that Richard H. Deane has been appointed Assistant Director for Plans and Analysis.

Mr. Deane received his B.S. and M.S. degrees in 1966 and 1968 respectively from Mississippi State University where he majored in Industrial Engineering. He received his Ph.D. in Industrial Engineering/Computer Science in 1971 from Purdue University. In addition, he was awarded a J.D. degree from Atlanta Law School in 1974 and admitted to the Georgia bar during that same year.

From 1971 to 1975, he was an Assistant Professor of Industrial and Systems Engineering at the Georgia Institute of Technology. In 1975 he received the Outstanding Research Award from the College of Engineering and was selected the outstanding faculty member in the School of Industrial and Systems Engineering at Georgia Tech. He was also a finalist in the 1975-1976 Judicial Fellows Program.

Since he joined the Administrative Office in 1975, he has served in numerous capacities, most recently as Deputy Assistant Director for Plans and Analysis.



## JUDGE WEBSTER (CA-8) SELECTED AS NEW FBI DIRECTOR

President Carter nominated Judge William H. Webster January 19 as Director of the Federal Bureau of Investigation. If he is confirmed, he will be the third FBI Director in the history of the Bureau.

Significantly, the President has chosen federal judges for three key Justice Department posts; Attorney General, Solicitor General and FBI Director.

(PROBATION from page 1)

the Administrative Office after they have completed their tour.

The officers are assuming all expenses including travel and whatever costs will be involved for food and incidental expenses while in London.

A second group will leave in June and a third in September.

## LIBRARY OF CONGRESS ASSISTING IN JUDICIAL RESEARCH

Last August, in cooperation with the Law Library of the Library of Congress, the Federal Judicial Center undertook a pilot project to determine the feasibility of expanding the use of the Law Library's research and reference services. These services, although already available to the federal judges, have not been used extensively in the past.

The Law Library is staffed with 90 highly capable librarians and lawyers, nine of whom specialized in American legal research. Thirty are legal specialists in foreign and international law with an expertise in 50 languages, representing approximately 200 legal jurisdictions. Many on their staff are recognized as specialists and are often called upon to give expert testimony.

(See RESEARCH, page 6)

## CHIEF JUSTICE PRESENTS YEAR-END REPORT ON FEDERAL JUDICIARY

In his year-end report on the federal judiciary, The Chief Justice said 1977 may be seen as a year of joint effort by all three branches of government to improve the federal courts.

He singled out the work of both the House of Representatives and the Senate Judiciary Committees in reporting out legislation which will provide for a significant number of new judges for both the courts of appeals as well as the district courts.

Here are the highlights of the year-end report. [A full text is available from the Federal Judicial Center Information Service.]

- The Senate has passed legislation which would enlarge the jurisdiction of federal magistrates by permitting them, with the consent of litigants, to conduct any civil proceeding or any criminal misdemeanor case.
  - Interest is growing for legislation which would eliminate mandatory appeal jurisdiction of the Supreme Court. Appeals as of right have increased from 28 percent of the cases decided by the Court on the merits in 1942 to 60 percent of such cases in 1972. "In short, in this period of time the Court has lost control of the majority of the cases which it decides on the merits."
  - The Senate Judiciary Committee has reported out a comprehensive revision of the new Federal Criminal Code which establishes a Sentencing Commission to promulgate sentencing guidelines for federal district judges. However, the Judicial Conference of the U.S. voted unanimously that the members of the Commission should be appointed by the Judicial Branch rather than divided between the Judicial Conference and the President.
- The new federal criminal code will impose a tremendous workload on all federal courts for

a decade or more because new and different jury instructions will be necessary. "In anticipation of the possible passage of this bill, the Federal Judicial Center has already begun studies to develop model jury instructions consistent with the new code."

- The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice has reported out legislation which would curtail a large segment of the jurisdiction of the federal courts which is based solely on the diversity of citizenship of the litigants. "These cases now represent 10 percent of the civil cases filed in the district courts. With few exceptions, these cases belong in the state courts and the transfer from 397 federal district judges to approximately 6,000 state court judges of general jurisdiction will impose a significant new load on the state courts."
- The value of impartial statements was recently shown when the Department of Justice assessed the impact of S. 36, the Veterans Administration Procedure and Judicial Review Act.
- There has been vigorous interest in the problems of the courts by the Executive Branch, especially following the appointment of Griffin B. Bell, formerly a judge of the United States Court of Appeals for the Fifth Circuit, as Attorney General. Attorney General Bell was chairman of the American Bar Association task force to implement the recommendations which came out of the 1976 National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.
- The American Bar Association has vigorously studied alternatives to traditional litigation in dealing with minor disputes. "The Department of Justice is initiating pilot projects for 'neighborhood justice centers' in an effort to determine whether this alternative



workable. Three federal courts are about to embark on an experimental program to bring out efforts of litigants to dispose of cases by arbitration in advance of trial."

Modern computer technology, was noted, should be explored to determine whether computerization of title records for real estate could substantially reduce the cost of examining titles.

Judges in three states now must participate in continuing education programs. More than 1,000 state judges have participated in programs held by the National Judicial College and over 94 percent of the sitting federal judges have participated in Federal Judicial Center seminars.

There has been significant progress in juror utilization but more must be done. In 1977, 64 percent of those persons called for jury service in federal courts actually served but this must be improved. In addition, federal judges must exercise greater authority to control unnecessarily lengthy examinations of potential jurors in the process of jury selection."

All but a handful of federal courts now use six-member juries indicating that there is widespread support for this development and that there is no reason to assume better results from twelve jurors than six.

The Chief Justice closed his year-end report on the federal judiciary with these words: "We may look back at 1977 with some satisfaction in this new operation... [b]ut this must be just a beginning. There is a long list of unfinished business we must deal with."

(ARBITRATION, from page 3)

relieve the caseload demands of the court. In addition, all judges responding agreed that providing litigants with swifter reviews of their claims was the next most important reason for adopting alternative procedures. However, the primary reason for adopting arbitration procedures was also to relieve the caseload demands on the court but those who have adopted arbitration indicate that they think it can also reduce court costs, provide swifter review of claims and reduce costs for litigants.

When questioned regarding the use of mandatory pretrial conferences, all of the judges responding felt the procedure was effective in increasing the overall efficiency of the court's operation and 39.9 percent felt the procedure could be considered very effective in increasing the court's efficiency.

The survey also examined the attitude of the Chief Judges regarding proposals to establish court annexed arbitration for some civil cases and to increase the jurisdiction of U.S. magistrates: 84 percent favored the implementation of court annexed arbitration as an effective means of reducing judicial workload with about 31 percent indicating they believed it would be very effective.

Regarding the attitudes of the judges concerning the proposal to increase the jurisdiction of magistrates, some 75.1 percent indicated that allowing magistrates to hear all civil cases where both parties agreed would effectively reduce their own workload and a majority believed this procedure would effectively reduce the costs of court litigation, thereby increasing the overall efficiency of the court's operation. Over ninety percent cited this procedure as a potentially effective means of providing litigants with swifter access to review of their claims.

## JUDGE WOODROUGH DIES AT 104



JUDGE JOSEPH W. WOODROUGH

Judge Joseph W. Woodrough (CA-8), the oldest living member of the federal judiciary, died recently in Chicago after serving for forty-five years as first a federal district judge and later, as a member of the Eighth Circuit Court of Appeals.

Known as "the walking judge" because of his habit of walking up to five miles each day, Judge Woodrough began his career when he was admitted to the Texas Bar at age 20 in 1894. A year later, he was elected a Texas state judge. Following his term as a state judge, he served as County Attorney of Ward County, Texas until 1897 when he returned to Nebraska to practice law until his appointment to the federal trial bench in 1916 by President Woodrow Wilson.

When he took his oath on April 24, 1916, he became the youngest federal judge in the nation. In 1933, President Franklin D. Roosevelt appointed him to the Eighth Circuit Court of Appeals.

During his service he dealt with such diverse cases as the enforcement of the Volstead Act in the 1920's, the sentencing of the "Birdman of Alcatraz", Robert Stroud, and the desegregation of the Little Rock, Arkansas public schools in 1956.

After his nearly half a century of service on the bench, Judge Woodrough retired from active service in 1961.



(RESEARCH, from page 4)

Since last summer many of the federal judges have availed themselves of these services.

So that a determination might be made of the type of research information or data that is needed, and in what areas, a reporting form was given the staff of the Library of Congress. On this form they record what was requested, whether they were able to fully meet the request, and the time involved to respond. The Inter-Judicial Affairs and Information Services Division at the Center has been monitoring and analyzing these reports, to learn where there may be weak or no resource material available.

Although it is still too early to draw conclusions, it is already apparent that legislative histories are high on the list of the needs of the judges, especially in those areas where they do not have access to large depository libraries.

Judges and their staff are reminded of the Library of Congress services available to them. Though priority must be given to members of Congress, the reports so far show that in nearly all instances timely responses have been made.

(CONFERENCE, from page 1)

assault cases and drug law prosecutions which dropped 22 percent.

Bankruptcy filings decreased in the year ending June 30, 1977 by 13 percent; 85 percent of all the filings in that period were in the non-business bankruptcy category.

The work of magistrates increased markedly: the total number of matters handled rose by almost 14 percent and pre-trial conferences, motions, prisoner petitions and post-indictment arraignments conducted by magistrates showed a 32 percent increase over the prior year.

In juror utilization, the federal courts continued to progress, with the percentage of jurors called but not selected declining from almost 33 percent in 1971 to 24 percent in 1977.

The Conference disapproved of legislation which would give legislative sanction to the term "Administrative Law Judge" and which would also provide that the salaries of such hearing examiners would be 90 percent of the salaries of federal district judges.

Concerning bills which would increase the fees of witnesses in federal court proceedings from twenty to thirty dollars per day and provide travel and subsistence on the same basis as is provided for federal government employees, the Conference approved, in concept, legislation which would put these changes into effect.

Approved by the Conference was a recommendation that staff law clerks and their assistants in the circuit court shall now be known as senior staff attorney and staff attorney and that these positions, if the Congress approves, should be graded at grades approximating the present salaries of the incumbents.

The expenditure of funds on a pilot civil arbitration program was authorized. This program will be consistent with guidelines and procedures to be established by the Committee on Court Administration in consultation with representatives of the Department of Justice.

The Conference was advised and agreed with the recommendation of the Committee on the Administration of the Federal Magistrates System that the Committee continue to study the eventual adoption of legislation to permit magistrates and referees in bankruptcy to work interchangeably to perform each other's duties as the needs of the courts and fluctuating caseloads dictate and thus provide the greatest flexibility in assigning the

business of the federal courts to subordinate judicial officers. Each district court would decide on the interchange of duties.

Sufficient funds have been appropriated for fiscal year 1978 to provide for 164 full-time magistrate positions, 3 part-time and 18 combination referee-magistrate or clerk-magistrate positions, the Conference was advised.

The Conference reiterated opposition to an Article I or Article III court, as envisioned in H.R. 8200, and also disapproved the establishment of a separate office of U.S. Trustee under the Attorney General and concurred in the views of the Department of Justice that such an arrangement would create conflicts of interest. It also disapproved enlarging the Judicial Conference from 25 to 36 members and increasing the size of the Board of the Federal Judicial Center by including referees in bankruptcy in membership.

With regard to Sentencing Institutes, the Conference advised that funds are available for two institutes during fiscal year 1978 and other circuits being canvassed which are considered to be overdue institutes. If none is ready during fiscal year 1978, the Committee on the Administration of the Probation System will recommend that the request of the Ninth Circuit for such an institute be approved later in the fiscal year.

On the recommendation of the Committee on the Administration of the Criminal Law, the Conference disapproved of H.R. 94 which, in the opinion of the Conference, would turn a grand jury proceeding into an adversarial one and harm the orderly administration of justice by imposing an enormous additional burden on an already overloaded judiciary.

Concerning the proposed new federal criminal code, S. 14

(See CONFERENCE, page 1)



Subcommittee on Improvements in Judicial Machinery.

## Magistrates' jurisdiction.

The Senate passed S.1613 on July 22 and the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice held one day of markup hearings on October 27 and is expected to resume markup of this bill after the new Session convenes.

(CONFERENCE, from page 6)

the Conference voted to request Congress to extend the effective date from two to three years following the date of enactment because of the sweeping changes incorporated in the bill and the resulting impact on the federal judiciary.

Regarding another provision of the proposed new federal criminal code, the Conference agreed with the Committee that it is a mistake to scrap all of the provisions of the Youth Corrections Act. Despite abuses which have been committed under the present legislation, the Conference is of the opinion that a statute should provide some discretion to the court in setting aside a conviction of a young offender, or of an offender of any age where the offender is without a prior record and has fulfilled all of the terms and conditions of his probation.

The proposed Sentencing Commission, the Conference believes, should be appointed by the Judiciary.

The Committee on the Operation of the Jury System and the Conference reaffirmed its previous positions that the voir dire examination in the federal courts should be conducted directly by district judges rather than by attorneys or by litigants. The report of the subcommittee urges the Federal Judicial Center in its training programs to include instructions geared to achieve the proper and comprehensive voir dire examination of federal jurors.

On the subject of grand jury reform, the Conference

recommended that a model grand jury charge should be promulgated in an attempt to develop a means of giving grand jurors effective notice of their rights and obligations without the necessity of legislation.

The Committee to Implement the Criminal Justice Act reported that during the first half of fiscal 1977, 20,614 persons were represented by assigned counsel or by defender organizations established pursuant to the Criminal Justice Act. This compares with 19,613 appointments in the first half of fiscal 1976. An increase of approximately four percent in the volume of appointments is forecast for fiscal 1978.

The Committee on the Bicentennial reported that five films and two videotapes have been produced for use in broadcasting and in teaching; that the biographical directory is proceeding but has been delayed by the failure of some judges to respond to questionnaires; that a manuscript has been prepared of the book written for the high school and college level on the federal judiciary and is now being reviewed; and that circuit histories have been completed on some of the courts and that several others are in preparation.

The Committee to Consider Standards for Admission to Practice in the Federal Courts reported that it expects to have its recommendations ready for presentation to the Judicial Conference at its session in September 1978.

## The Third Branch

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

## Congressional Action

Senate Majority Leader Robert C. Byrd (D., West Va.) said January 10 that the legislative agenda for the Second Session of Congress will include legislation to reform the Criminal Code, Labor Law Reform, Panama Canal Treaties and the renewal of the Strategic Arms Limitation Agreement.

During the recess, the House Judiciary Subcommittee on Criminal Justice chaired by Rep. James R. Mann (Dem. S.C.) has been holding a series of briefing sessions which include a section-by-section analysis of S.1437, the new Federal Criminal Code. The bill was reported out by the full Senate Judiciary Committee on November 2 and is expected to be passed by the full Senate early in the Session.

The briefing sessions on the bill, which were held by the House Judiciary Subcommittee, are designed to give members of the Subcommittee necessary background information which will enable the Subcommittee to hold hearings in February, a spokesman for the Subcommittee said.

**New judgeships.** The Senate passed S.11 on May 24 and the House Judiciary approved its own version, H.R.7843, on November 30, thus clearing the bill for floor action early in the Session in both the Senate and the House.

**Diversity.** The House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice reported H.R. 622 to the full Committee on October 20 and full Committee action is expected early in the Session. The Senate bill, S.12094, is pending before the



# DOJFC calendar

- Feb. 1 Joint Committee on Code of Judicial Conduct, Miami, FL  
 Feb. 2-3 Judicial Conference Criminal Law Committee, New Orleans, LA  
 Feb. 2-3 Federal Judicial Center Board Meeting, Miami, FL  
 Feb. 2-3 Judicial Conference Criminal Law Committee, New Orleans, LA  
 Feb. 2-3 Judicial Conference Criminal Rules Committee, Washington, DC  
 Feb. 7-10 Employment Placement Workshop for Probation Officers, Los Angeles, CA  
 Feb. 9-10 Judicial Conference Court Administration Committee, San Francisco, CA

- Feb. 10 Judicial Conference Bankruptcy Committee, Washington, DC  
 Feb. 13-15 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Palm Springs, CA  
 Feb. 13-15 Advanced Management Seminar for Probation Clerks, San Diego, CA  
 Feb. 13-17 Advanced Seminar Pretrial Services Agency Officers, San Antonio, TX  
 Feb. 16-17 Management Training for Supervisors, Los Angeles, CA  
 Feb. 21-24 Video Production Workshop, San Francisco, CA  
 Feb. 22-24 Seminar for Assistant Defenders and Panel, Los Angeles, CA  
 Feb. 23-24 Workshop for District Judges, Phoenix, AZ

## PERSONNEL

### Appointments

A. Leon Higginbotham, Jr., U.S. Circuit Judge, 3rd Cir., Nov. 7  
 Gilbert S. Merritt, U.S. Circuit Judge, 6th Cir., Nov. 18  
 Elsjane Trimble Roy, U.S. District Judge, E. & W.D. Ark., Dec. 9  
 Thomas Tang, U.S. Circuit Judge, 9th Cir., Nov. 25  
 George C. Carr, U.S. District Judge, M.D. Fla., Jan. 6

### Confirmations

John L. Kane, Jr., U.S. Circuit Judge, 10th Cir., Dec. 15  
 Robert S. Vance, U.S. Circuit Judge, 5th Cir., Dec. 15  
 James K. Logan, U.S. Circuit Judge, 10th Cir., Dec. 15

### Nominations

Jack E. Tanner, U.S. District Judge, E&W.D. Wash., Jan. 20  
 Almeric L. Christian, Reno, nominated for 8 year term, U.S. District Judge, D. V.I., Jan.

### Death

Gerald McLaughlin, U.S. Senior Circuit Judge, 3rd Cir., Dec.

### CIRCUIT JUDICIAL CONFERENCES FOR 1978

First	May 22-24	Hyannis, MA
Second	Sept. 7-9	Buck Hill Falls, PA
Third	Oct. 23-26	St. Thomas, V.I.
Fourth	June 28-July 1	White Sulphur Springs, W. VA
D.C.	May 21-23	Williamsburg, VA
Fifth	April 23-26	New Orleans, LA
Sixth	May 10-12	Nashville, TN
Seventh	May 8-11	Lake Delavan, WS
Eighth	August 20-23	Brainerd, MN
Ninth	May 17-20	Scottsdale, AR
Tenth	July 19-22	Colorado Springs, CO

### THE THIRD BRANCH

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## HOUSE APPROVES 145 NEW JUDGESHIPS

By an overwhelming 319 to 80 vote, the House of representatives February 7 approved 145 new federal judgeships, 100 for the district courts and 35 for the courts of appeals.

Last session, the Senate by voice vote approved 148 new judgeships, 113 for the district courts and 35 for the courts of appeals. In addition, the Senate bill, S. 11, would create a new eleventh Circuit Court by splitting the Fifth Circuit.

The House bill, H.R. 7843, did not create a new circuit in the South but repealed the so-called "grandfather" clause enacted in 1958 which permitted some chief judges to retain that position after reaching age 70.

In addition, the House bill requires the President to promulgate procedures and guidelines for the merit selection of nominees for the district court judgeships authorized by the bill. However, the bill permits the President to give such regulations with respect to any nomination by notifying the Senate of the reasons for the waiver. Specifically, the sections of the bill authorizing new district judgeships shall not take effect until the merit selection regulations are promulgated.

The House of Representatives and the Senate are expected to point a joint conference committee which will reconcile the differences in the two bills and report out a clean bill early in March.

Below is a list of the judgeships authorized by the bill:

### District

Alabama Northern .....	3
Alabama Middle .....	1
Arizona .....	2
Arkansas Eastern .....	2
California Northern .....	1
California Eastern .....	3
California Central .....	1
California Southern .....	2
Colorado .....	2
Connecticut .....	1
Florida Middle .....	3
Florida Southern .....	5
Georgia Northern .....	4
Georgia Southern .....	1
Illinois Eastern .....	1
Illinois Northern .....	3
Indiana Northern .....	1
Iowa Southern .....	1
Kansas .....	1
Kentucky Eastern .....	12
Louisiana Eastern .....	3
Louisiana Middle .....	1
Louisiana Western .....	1
Maine .....	1
Maryland .....	2

(See JUDGESHIPS, page 2)

In a newspaper interview, widely published one day before the House vote on the judgeship bill, Raymond M. Taylor was quoted as saying that "If they were operating efficiently, there might be no necessity for any new judges, and certainly not on the appellate level." Mr. Taylor was identified as the author of a report prepared for the Federal Judicial Center, analyzing the holdings and operations of the federal court library system.

As soon as the interview was published, Center Director A. Leo Levin denied that Taylor's report cast any doubt on the need for any of the additional judgeships and communicated that fact to the House Judiciary Committee prior to floor debate on the bill. Congressional Quarterly, the highly respected, unofficial journal of Congressional actions, quoted Levin as saying that he was "unequivocal" in denying that Mr. Taylor's study had any rational bearing on the number of new judgeships that were needed.

Mr. Taylor, former librarian of the North Carolina Supreme Court, had not been asked to analyze the need for new judgeships and did not do so in his report.

Taylor's major recommendation would have divorced federal judicial libraries from the Administrative Office and

(See STUDY, page 2)



(STUDY, from page 1)

created an independent federal agency, initially based in North Carolina, to provide research for the federal judiciary. The Center rejected this recommendation. Alternative recommendations have been approved by the Center's Board for the consideration of the Judicial Conference of the United States.

The final report of the Center, transmitting the Board's recommendations to the Judicial Conference, was the culmination of an eighteen-month study prepared under the supervision of the Federal Judicial Center's Division of Inter-Judicial Affairs and Information Services at the request of the Judicial Conference. The report was prepared with the assistance of an advisory committee chaired by Judge John D. Butzner, Jr., (CA-4) and composed of federal judges and library authorities.



(JUDGESHIPs, from page 1)

Massachusetts .....	3
Michigan Eastern .....	3
Michigan Western .....	2
Minnesota .....	11
Missouri Eastern .....	1
Missouri Western .....	2
Nevada .....	1
New Hampshire .....	1
New Jersey .....	2
New Mexico .....	1
New York Northern .....	1
New York Eastern .....	1
North Carolina Eastern .....	1
North Carolina Middle .....	1
North Carolina Western .....	1
Ohio Northern .....	11
Ohio Southern .....	1
Oklahoma (3 districts) .....	2
Oregon .....	2
Pennsylvania Middle .....	2
South Carolina .....	3
South Dakota .....	1
Tennessee Middle .....	1
Texas Northern .....	3

Texas Eastern .....	1
Texas Southern .....	4
Texas Western .....	1
Utah .....	1
Virginia Eastern .....	2
Virginia Western .....	2
Washington Eastern .....	1/2
Washington Western .....	1 1/2
West Virginia Southern .....	11
Wisconsin Eastern .....	1
Wisconsin Western .....	1
Wyoming .....	1
Puerto Rico .....	3

<sup>1</sup>Plus 1 temporary.

#### Circuit:

1st .....	1
2nd .....	2
3rd .....	1
4th .....	3
5th .....	11
6th .....	2
7th .....	1
8th .....	1
9th .....	10
10th .....	1
D.C. ....	2

#### NEW BANKRUPTCY COURT SYSTEM APPROVED BY HOUSE

The House of Representatives February 1 voted 262 to 146 to establish a new federal court system with sole jurisdiction over bankruptcy cases. The judges would have Article III status.

However, it is questionable that the Senate will follow the House move, one which is opposed by the Judicial Conference and the Department of Justice.

When the bill, H.R. 8200, first came to the House floor last October, the House, in a preliminary vote, declined to create a new bankruptcy court system. However, the sponsors of the bill took the measure off the floor of the House and worked to obtain additional support for the bill.

The House-passed bill also would create a separate office of United States Trustee under the Attorney General. Both the

Judicial Conference and the Department of Justice are opposed to this concept on the ground that it would create a conflict of interest.

As passed by the House, H.R. 8200 would make a series of technical changes in present bankruptcy procedures, many favoring debtors. For example, one provision would allow a debtor with a steady income to file a repayment plan with the court enabling payment of the outstanding debt over a three-year period.

The Senate Judicial Committee is not expected to take action on the House-passed bankruptcy bill until late in the Spring.

#### GUIDELINES FOR ACTIVITIES AND AFFILIATIONS OF CLERK AND PROBATION OFFICERS TO BE ESTABLISHED

The Judicial Conference Judicial Committee on the Code of Judicial Conduct has established a subcommittee to prepare guidelines pertaining to the activities and affiliations of clerks of court and probation officers.

The subcommittee, consisting of Judge Bernard M. Deane (N.D. Ill.), Chairman; Chief Judge Frank M. Coffin (CA-1) and Judge Edward T. Gigney (D. Me.), is endeavoring to obtain the views and suggestions of clerks and probation officers as to proper guidelines.

With the assistance of the Administrative Office Division of Clerks and Probation, invitations have been extended to eight clerks of court and seven probation officers asking them to serve on two advisory committees. The committees will, in turn, help the subcommittee formulate guidelines which will be considered in late March.

The guidelines which the subcommittee recommends will then be submitted to the J



committee on the Code of Judicial Conduct at its meeting next summer.

The members of the ad hoc Clerks' advisory committee are Stuart Cunningham (N.D. Ill.), Marvin Helart (D. Wyo.), William H. Barry, Jr. (D. N.H.), John H. Carter (N.D. Ga.), Thomas F. Strubbe (CA-7), James E. Vandegrift (N.D. Ala.), and William K. Slate, II (CA-4). The members of the Probation Officers ad hoc advisory committee are Chester C. McLaughlin (W.D. Tex), Henry Milburn (D. Me.), William S. Scher (N.D. Ill.), Walter Evans (Ore.), Claude H. Huguley, Jr. (S.C.), Raymond H. Clark (S.D. N.Y.) and Morris Kuznesof (S.D. N.Y.).

#### INTELLIGENCE ORDER REQUIRES COURT APPROVAL OF SOME DOMESTIC SURVEILLANCE

President Carter January 24 signed a sweeping Executive Order "to provide for the organization and control of United States foreign intelligence activities" which requires a "judicial warrant" in instances in which U.S. citizens are the target of domestic surveillance.

However, the Executive Order would allow the citizen to be the target of such activities if the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States citizen is an agent of a foreign power.

The collection techniques include electronic surveillance, television camera monitoring, physical searches, mail surveillance, and physical surveillance.

The full text of the Executive Order, number 12036, was published in the January 26 issue of the Federal Register beginning at page 3674.

#### SENATE PASSES NEW FEDERAL CRIMINAL CODE

After over six years of work, the Senate January 30 passed S. 1437, the Criminal Code Reform Act of 1977.

The bill codified or repealed some 3,000 statutes and created a Federal Sentencing Commission as an independent Commission in the Judicial Branch consisting of seven members, four appointed by the President and three by the Judicial Conference. The Commission will establish sentencing policies and practices that avoid unwarranted sentence disparities among defendants who have been found guilty of similar criminal conduct. This Commission will determine and promulgate guidelines for use by a sentencing court in determining the sentence to be imposed.

In addition, the bill would provide for fixed rather than indeterminate prison terms for most offenses.

The bill was passed by the Senate after liberals and conservatives worked out a compromise and sections which were most controversial were removed from the bill. However, the prospects of early action on the new Code in the House of Representatives are remote.

Representative James R. Mann, Chairman of the House Criminal Justice Subcommittee, said it was a "toss-up" whether the House will enact the Code this year. His Subcommittee has been holding informal briefing sessions on the provisions in the Senate bill for months.

House hearings on the bill are tentatively scheduled to begin in early March. (See the August 1977 issue of *The Third Branch* for a detailed analysis of the bill. However, the bill was substantially amended during floor debate last month.)



JAMES MACKLIN

#### JAMES MACKLIN NAMED A.O. ASSISTANT DIRECTOR

The Director of the Administrative Office of U.S. Courts, William E. Foley, announced that James E. Macklin, Jr. has been appointed Assistant Director of the Administrative Office for Program Management.

Prior to his appointment, Mr. Macklin headed the A.O. Criminal Justice Act Division for over two years since the Division was created in the fall of 1975.

In his new post, Mr. Macklin will be managing programs in the Administrative Office Divisions of Magistrates, Probation, Bankruptcy, Criminal Justice Act, and Clerks. He will be charged with full administrative responsibility for planning, developing, directing and coordinating all program activities of the five Divisions and the Equal Employment Opportunity Unit.

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#### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts





## CHIEF JUSTICE PRESENTS STATE OF THE JUDICIARY ADDRESS TO ABA

In his State of the Judiciary address presented February 12 to the midyear meeting of the American Bar Association, Chief Justice Warren E. Burger asked the Association to focus its attention on the problem of the professional competence of lawyers practicing in the nation's courts.

The Chief Justice also pointed to other problems including the lack of any system to provide federal judges when needed by the federal court system, better utilization of jurors, use of compulsory arbitration and prison reform.

Here are extracts from the address. (The full text is available from the Federal Judicial Center Information Service.)

**Judgeships.** "We speak constantly of providing speedy justice, but if the present system—or rather lack of any system—for providing federal judges when they are needed is not changed, the objective of speedy justice will become empty rhetoric.... We can cope with that problem (absorbing, in a short period of time, an increase of nearly thirty percent in the number of federal judges) but I ask your help to develop some new method of providing additional judges when they are needed.... I believe the President and the Congress will be receptive to develop some sensible and workable bipartisan system to provide the required judges as they are needed."

**Juror Utilization.** "Some of our federal districts do much better than others, but courts must devise systems that will avoid the waste resulting from our casual attitude toward jurors.... Six-member juries in federal civil cases are now being used in all but a few federal districts and have proven successful."

**Misuse of Witnesses.** "Another source of criticism and frustration in both federal and state courts—and I believe legitimately so—comes from people called as witnesses. Hundreds of people experience the frustration of being required to present themselves in court on a given day and hour, on pain of contempt, only to be told the case has been postponed.... Experiences of this kind are the result of bad management, at best, or, at worst, the result of the manipulation of the system by irresponsible lawyers, or the apathy of judges who permit it to happen."

**Abuse of Pretrial Procedures.** "Another matter calls for study by judges and lawyers: For years there has been a growing volume of complaints by lawyers and judges, on the over-use and abuse of the pretrial procedures under the federal rules. The Federal Judicial Center has been studying this subject and considering what sanctions and remedies can be employed by judges to prevent abuses of the system."

**Litigation Costs.** "Our profession has a duty to keep justice within the reach of every citizen, and to do that the performance of the participants—lawyers and judges and the management of the courts—must be improved."

**Trial Advocacy.** "Another area is perhaps one of the most serious problems facing our profession... today. It is the professional competence of those lawyers who come into the courts. Here I emphasize not the competence of lawyers generally but those who seek to use the courts, which are provided at great expense by the public. Here again, the needs of the consumers must be kept in mind. If a case which could be tried in two or three days with competent advocates actually takes four, five or six days, someone must pay the cost.

First we should see to it that those lawyers who come into the courts have at least the minimum acceptable competence.... Until we establish special standards for the right to appear in the courts, independent of admission to the Bar generally, we will not solve our problem.... I have never contemplated in any sense a Barrister-Solicitor division of our profession, as in England but only a requirement of special training for those who seek to represent others in the courts."

**Education.** "Continuing professional education is, of course, equally applicable to judges and the advocates who appear in court.... In the federal system, for example, 94 percent of the federal judges active today have taken part in training seminars of the Federal Judicial Center."

**Advocacy.** "My position was and is that the lack of adequate training of lawyers for courtroom work is a serious problem—a serious problem in the administration of justice. Recently, the Judicial Conference of the United States created a special committee to study this problem and to propose standards for admission to practice in the federal courts. That committee sent a questionnaire to every federal judge in the United States and 81 percent of them responded. Of those responding, 39 percent said that the problem of inadequacy of trial lawyers in federal courts was 'a serious problem.'"

**Alternative Dispute Resolution.** "But we must now turn to explore more fully the utilization of arbitration as an alternative in large commercial conflicts and other claims, a procedure widely employed for so long in many other countries.... It is not clear whether that kind of procedure (exhausting arbitration method) before resorting to the court



## MEMORIAL CEREMONIES HELD AT SUPREME COURT FOR MR. JUSTICE CLARK

Formal proceedings were held at the Supreme Court on January 23 to memorialize Mr. Justice Tom C. Clark, who sat on the Supreme Court of the United States from 1949 to 1967.

Members of the Supreme Court Bar, as is the custom, first met at the Court to adopt a resolution eulogizing the Justice.

Solicitor General Wade McCree presided and turned the meeting over to Chief Judge Thomas E. Fairchild of the Tenth Circuit. Justice Clark was Circuit Justice for the Tenth from 1957 to 1967.

Addresses were heard by the hundreds gathered in the Great Hall. These were delivered by Mark Clifford, Esquire, Professor Charles Alan Wright, and Fred M. Vinson, Jr., Esquire.

In eloquent language they praised the contributions of Mr. Justice Clark, pointing out at least four distinct careers—his career in the private sector, his

career as a Government lawyer (the only Attorney General on record to have come up through the ranks), his career as an Associate Justice of the Supreme Court of the United States, and, finally, a very full career as a retired Justice, during which years he sat on the U. S. District Courts and all eleven of the U. S. Courts of Appeals while at the same time making enormous contributions in the area of judicial administration.

Following the action of the Supreme Court Bar, the gathering moved into the courtroom to formally present the resolution to the Supreme Court, to hear an address by Attorney General Griffin B. Bell, and a eulogy on behalf of the Court by the Chief Justice.

Mrs. Clark and other members of the Clark family received guests in the East and West Conference rooms following the ceremonies.



Pictured above are, L to R, Chief Judge Thomas E. Fairchild (CA-7), Supreme Court Clerk Michael Rodak, Jr., Professor Charles Alan Wright, and Solicitor General Wade H. McCree, Jr.

(DRESS from page 4)

could be enforceable by sanctions imposed upon rogues who refuse to resort to litigation."

**Corrections.** "We profess a high value for the individual, but treating each individual criminal as a defendant the most elaborate process, the most expensive one known anywhere in the world, and then casting the guilty ones into 19th century penal institutions is—to paraphrase an 18th century

statesman—not simply wrong, it is stupid—and expensively stupid at that—and all of us pay the bill.... Our goal should be to develop positive, definite educational programs so that the prisoners will have a chance to leave correctional institutions somewhat better human beings than when they entered... and trained in a marketable skill. Then we must encourage employers to hire them. Correctional programs must be designed to encourage prisoners literally to *learn* their

## JUVENILE STANDARDS CONSIDERED

Agreement was reached at the February, 1978 meeting of the American Bar Association that final action on the adoption of juvenile justice standards would be taken at the Association's 1979 Mid-year meeting in Atlanta.

Chief Judge Irving R. Kaufman (CA-2) had urged consideration of the proposed standards at the annual meeting of the Association next August, but he accepted the compromise date. Chief Judge Kaufman is chairman of the American Bar Association—Institute for Judicial Administration Joint Commission which is sponsoring the standards project. The Joint Commission is comprised of experts in the field of juvenile justice including judges, lawyers, sociologists, and court administrators, penologists, and others.

The commission, after seven years of work and in consultation with four advisory committees and other persons throughout the country, completed a final draft of the proposed standards in twenty-three volumes plus a summary volume.

The purpose of the proposed standards is to offer a model code for a juvenile justice system for those states that are considering amending or revising their juvenile code.

way out of confinement. Society must provide not just walls and bars but meaningful training for their re-entry to society.... Today, I therefore urge the Association to help develop a plan... for a national training facility along the lines of that great institution—the FBI Academy at Quantico, Va.—to train correctional personnel in modern procedures and methods as thousands of state and local police have been trained by the federal government."



## ABA HOUSE OF DELEGATES ACTIONS

At the American Bar Association's midyear meeting in New Orleans, February 13-15, the House of Delegates considered and took action on a number of resolutions of interest to the federal judiciary. Of particular note were:

### APPROVED

**Fees.** This resolution supported the adoption of legislation to authorize the Attorney General to prescribe by regulation fees now set by statute for the service of summons, writs, and other orders by the United States Marshal Service. The resolution called for Congress to increase fees, travel, and subsistence allowances for witnesses before and jurors serving in federal courts. The American Bar Association body further supported legislation to excuse prospective federal jurors from federal jury service on the grounds of distance upon a showing of individual hardship. Finally, the resolution supported legislation providing for a civil penalty and injunctive relief in

the event of a discharge or threatened discharge of an employee by reason of such employee's federal jury service. (Res. 104)

**Professional discipline.** This resolution recommends the adoption of the Model Federal Rules of Disciplinary Enforcement by the Judicial Conference of the United States and by each federal court of the United States. According to an accompanying report, such rules are needed not only to forestall legislative interference, but also because federal discipline "is disorganized, nonuniform, in violation of due process, and detrimental to the reputation of the profession in the eyes of the public." (Res. 109)

**Attorney fees.** This resolution supports "the principle that reasonable attorneys' fees be included as costs recoverable by prevailing parties in more categories of civil litigation than present rules permit, when they would facilitate the use of legal remedies and services."

### REMARKS AVAILABLE ON CONSEQUENCES OF ALTERNATIVE SENTENCES

Federal judges need not be taken by surprise at what happens after sentencing. That is the thrust of a presentation by Messrs. Eldridge, Partridge, and Chaset, of the Federal Judicial Center staff, and delivered at the Sentencing Institute for the Second and Seventh Circuits convened at Morgantown, West Virginia last fall.

The remarks, entitled *The Consequences of Alternative Sentences: A Presentation*, have recently been released by the Judicial Center in the form of a paper as an aid to judges seeking more information on this critical subject.

The remarks describe the

relationship between the formal sentence imposed by the judge and the subsequent treatment of the offender by the Parole Commission, the Bureau of Prisons and the probation office. While statutory and case law detail a number of the differences among alternative sentencing options, the policies and practices of the agencies charged with post sentencing responsibility create other consequences not regularly detailed in standard legal literature. It is the premise of these remarks that an appreciation of these consequences is necessary in the fashioning of appropriate sentences.

[Copies of the remarks are available by contacting the FJC's Information Service.]

To that end, the American Bar Association urges the enactment of legislation to permit courts and administrative agencies, in the interest of justice, to award as costs reasonable attorneys' fees and other expenses of litigation from public funds to a private party who substantially prevailed against the federal Government as a named party in a civil action or administrative proceeding where (a) the action results in substantial public benefit or enforces an important public right and (b) the economic interest of the party is small in comparison to the cost of effective participation or the party does not have sufficient resources to compensate counsel. (Res. 129, as amended)

A more specific resolution was also passed supporting the award of attorney fees and costs to the prevailing party (other than the Government) in litigation involving "the redetermination, refund, or collection of any internal revenue tax." (Res. 131)

### REJECTED

**Diversity jurisdiction.** In the face of claims by critics that federal court dockets are too overcrowded, and by opponents that important rights are at stake, the House of Delegates refused to endorse a resolution to abolish or in any way change diversity jurisdiction. (Res. 104a)

### WITHDRAWN

The House of Delegates withdrew and took no action on a number of other resolutions. These included a call for an annual salary review for both the federal and state judiciary and revision in the present manner U. S. Magistrates are appointed.





## STATE-FEDERAL

**Missouri.** Columbia, Missouri was the site selected for a meeting of Missouri's State-Federal Judicial Council last November. Four subjects were on the agenda for discussion:

(1) Abolition of Diversity, and Congressman Robert W.astenmeier's bill, H.R. 9622, which would transfer to the state courts many cases now tried in the federal courts purely because of the diversity of citizenship of the parties to the litigation.

(2) State advisory opinions relating to novel questions arising in federal cases.

(3) Administrative processing of prisoner complaints.

(4) Problems common to the state and federal courts.

**New Jersey.** In his recent address of the Judiciary address Chief Justice Richard J. Hughes (Supreme Court of New Jersey) included a section on cooperation with the federal courts.

Reported were: joint ceremonies to admit new members to the bar to practice in the state and federal courts; cooperation in resolving conflicting calendar commitments of trial lawyers; and meetings with three New Jersey Assignment Judges and Chief Judge Lawrence Whipple (ist. Ct., D. N.J.) to determine whether the federal system of assignment of cases for trial could be adaptable in the New Jersey state courts.

In his 1977 Year-End Report, Chief Justice Burger commended the practice of state Chief Justices of making an annual report to their legislatures or their bar associations. This practice has now been adopted by over one-half of the state Chief Justices.

**Mississippi.** Judge William C. Keady (N.D. Miss.), a member of the Judicial Conference of the United States, made a report to

the Conference last September on Mississippi's State-Federal Judicial Council. The Council is now chaired by Chief Justice Neville Patterson (Sup. Ct. Miss.) who was one of the conferees at the Federal Judicial Center's state-federal conference of appellate judges held in 1971. Federal judges currently members of the Council are Judges Charles Clark and J. P. Coleman.

Matters discussed at the last Council meeting were:

- Habeas corpus cases and the necessity for the state trial judges handling these cases to make and preserve a full record of the acceptance of pleas of guilty or nolo contendere by the state defendants;

- Adoption of a formula for establishing priorities in docket settings whereby the first case having a firm setting will control;

- Promotion of Law Day USA observances in state and federal courts;

- Agreement for the interchange of courtroom facilities whenever a need might arise;

- Adoption by state correction officials of a program to establish an administrative grievance procedure for inmates in the state penitentiary;

- Approval for enactment of legislation to provide for certification by a U. S. Circuit Court of Appeals or the Supreme Court of the United States to the Mississippi Supreme Court of unresolved questions of state law dispositive of the pending federal litigation.

Judge Keady reports that at their Council meetings representatives of the Mississippi State Bar are present and that they have made valuable contributions, especially through implementation of the Council's proposals. The State Bar has established a standing committee called Court Liaison and Judicial

## KANSAS COURT OFFICIALS DESIGN TECHNIQUE TO AVOID TRAFFIC OFFENSE WARRANTS

U.S. Magistrate Samuel Crow and Probation Officer Ralph DeLoach of the District of Kansas have devised a system to reduce the number of warrants issued in traffic cases involving military personnel.

By utilizing this system, some three hundred warrants issued yearly for nonpayment of traffic fines by military personnel stationed at Fort Riley, Kansas have been eliminated.

Many members of the military were unable to pay the traffic fines in full immediately or felt traffic tickets were inconsequential and there was a lack of military sanctions for military personnel convicted of misdemeanor offenses in civilian courts. As a result, it was necessary to issue arrest warrants since there were not any other realistic alternatives available to the Court.

After considerable research, the Probation Office, in conjunction with the Magistrate and the military, devised a plan through which military personnel who are unable to pay their traffic fines when they are assessed, may authorize a voluntary deduction from their pay. By using the military form DD139 which is a type of one-time allotment authorized for payment of a debt the Court has virtually eliminated the issuance of warrants for nonpayment.

In practice, all ticketed individuals are assembled in an auditorium near the Court and persons who wish to plead not guilty are asked to leave. Those

(See WARRANTS, page 8)

Administration whose goal is to bring to the attention of the state and federal trial judges problems encountered by members of the bar in such areas as pretrial conferences, discovery, and voir dire.



# DOJ calendar

Feb. 27-28 In-service Training  
for Probation Officers,  
Nashville, TN

Feb. 27-Mar. 4 Technical  
Training for Bankruptcy  
Court, San Juan, PR

Mar. 2 Committee on Bank-  
ruptcy Legislation, Washing-  
ton, DC

Mar. 2-3 Court Management for  
Probation Officers

Mar. 6-8 Advanced Manage-  
ment Seminar for Probation  
Clerks, El Paso, TX

Mar. 6-8 Workshop for Docket  
Clerks, Hartford, CT

Mar. 6-10 Orientation Seminar  
for U.S. Probation Officers,  
Washington, DC

Mar. 8-10 Meeting of Circuit  
Executives, Washington, DC

Mar. 9 Time Management  
Seminar, El Paso, TX

Mar. 9-10 Judicial Conference  
of the United States,  
Washington, DC

Mar. 14-16 Advanced Manage-  
ment Workshop for Supervising  
Probation Officers,  
Washington, DC

Mar. 16-18 Seminar for  
Bankruptcy Judges, Los  
Angeles, CA

Mar. 20-22 Management  
Training for Supervisors,  
Indianapolis, IN

Mar. 21-23 Seminar for the  
Staff of the U.S. Magistrates,  
New Orleans, LA

Mar. 23 Time Management  
Seminar, Indianapolis, IN

## THE THIRD BRANCH

VOL. 10, NO. 2 FEBRUARY 1978

## THE FEDERAL JUDICIAL CENTER

DOLLEY MADISON HOUSE  
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WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

# PERSONNEL

## APPOINTMENTS

Pierre N. Leval, U.S. District  
Judge, S.D.N.Y., January 6

Robert S. Vance, U.S. Circuit  
Judge, 5th Cir., January 3

## CONFIRMATION

A. David Mazzone, U.S. District  
Judge, D.Mass., February 7

## NOMINATIONS

Almeric L. Christian, Judge of  
the District Court, Virgin  
Islands, January 20

Robert F. Collins, U.S. District  
Judge, E.D.La., January 26

Paul A. Simmons, U.S. District  
Judge, W.D.Pa., January 26

Jack E. Tanner, U.S. District  
Judge, E. & W.D. Wash.,  
January 20

Ellen B. Burns, U.S. District  
Judge, D.Conn., February 15

Robert W. Sweet, U.S. District  
Judge, S.D.N.Y., February 17

## DEATHS

Wilson Warlick, U.S. Senior  
District Judge, W.D.N.C.,  
January 30

R. Blake West, U.S. District  
Judge, E.D.La., January 24

Mar. 27-28 Technical Training  
for Bankruptcy Court,  
Jacksonville, FL

Mar. 27-29 Workshop for  
Docket Clerks, Cleveland, OH

Mar. 28-29 Time Management  
Seminar, Baltimore, MD

Mar. 30-31 Workshop for  
District Judges [Fifth (W)  
Circuit], Austin, TX

(WARRANTS, from page 7)

who wish to pay the fine and  
asked to leave the auditorium  
also and proceed to the  
Magistrate's Clerk while the  
remainder are advised that they  
may elect to voluntarily  
authorize a pay deduction for  
the purpose of paying the fine.

In the rear of the auditorium  
members of the Probation  
Office's staff are available with  
partially completed forms which  
require only the Social Security  
number of the individual, the  
amount of the fine and the  
individual's signature.

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MARCH, 1978

## JUDICIAL CONFERENCE HOLDS SPRING MEETING

The Judicial Conference of the United States held its Spring meeting at the Supreme Court March 9-10 and reendorsed, in principle, the objectives of legislation which would create a commission within the federal judiciary to consider and deal with complaints against members of the Judiciary.

In addition, the Conference

Endorsed the House-passed bill, H.R. 9622, which would abolish diversity jurisdiction in federal courts.

Endorsed S. 2266, the bill which would revise the bankruptcy laws, now pending before the Senate Judiciary Committee. The conference decided to oppose the House-passed Bankruptcy bill, H.R. 100, insofar as it would establish a separate Article III court for bankruptcy cases and to create a separate office of United States Trustee in the Department of Justice.

Disapproved, as a matter of policy, the practice of federal judges traveling abroad to take positions of testimony in cases pending before them.

Disagreed with certain substantive and procedural provisions of the Civil Rights Improvements Act, S. 35. The conference recommended

### HOUSE APPROVES DIVERSITY JURISDICTION BILL

By a vote of 266 to 133, the House of Representatives, February 28, approved H.R. 9622, the bill which eliminates almost all diversity jurisdiction in federal courts.

If enacted, the bill would divert some 30,000 cases yearly from federal to state courts. However, alienage jurisdiction in cases between U.S. citizens and those of a foreign nation or controversies between foreign nations and the United States, is retained. In addition, the bill also eliminates the amount in controversy requirement in federal question cases.

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings March 17 and 20 on counterpart legislation which would abolish almost all diversity jurisdiction in federal courts.

against enactment of the bill in its present form, but took no position on the policy of extending coverage of the Civil Rights Act to suits by citizens

(See CONFERENCE, page 2)

### JUDGE AUBREY ROBINSON SELECTED FOR FJC BOARD



Judge Aubrey E. Robinson, Jr.

The Judicial Conference of the United States, at its Spring meeting this month, selected Judge Aubrey E. Robinson, Jr. as a member of the Board of the Federal Judicial Center.

Judge Robinson replaces Judge Marvin E. Frankel (S.D. N.Y.) whose term has expired.

Judge Robinson was appointed to the District Court for the District of Columbia on November 3, 1966. He is a graduate of Cornell University and Cornell Law School where he received his LL.B. in 1947. He served in the U.S. Army during World War II.

From 1965-1966 he was an Associate Judge of the Juvenile Court for the District of Columbia and in recent years he has served on the Judicial Conference Ad Hoc Committee on Court Facilities and Design. In 1977, he was appointed to the

(See ROBINSON, page 3)



(CONFERENCE, from page 1)

against state or local governments.

Attorney General Griffin B. Bell and Solicitor General Wade H. McCree, Jr. attended the Conference during the first day. The Attorney General discussed matters relating to the business of the federal courts and legislation of interest to the members of the Conference.



The Chief Justice and Chief Judge Cornelia G. Kennedy.

Chief Judge Cornelia G. Kennedy (W.D. Mich.), a member of the Conference, is the first woman district judge to serve on the Conference and only the second to serve as a member of the Conference. Judge Florence J. Allen (CA-6) was the first woman to serve on the Conference.

The Judicial Conference, in response to a Congressional request for comment, issued the following statement:

"Among the proposals currently pending in Congress, establishing methods for dealing with judicial conduct and disability, the Judicial Conference approves in principle the objectives of S. 1423, as embodied in the committee print of February 3, 1978.

"While fully cognizant of the Constitutional powers vested in the Congress and the Conference's obligation to respect those powers, in responding to Congressional requests for views on those bills, the Conference also believes it is obligated to express its genuine concern that enactment of any bill

authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"Aside from the reservation expressed on the constitutionality of the removal feature, the Conference concludes that legislation placing authority in the Judicial Branch itself is both compatible with long-standing concepts of separation of powers and desirable in terms of maintaining the ultimate objective of an independent judiciary worthy of public confidence.

"We believe that S. 1423 should be altered in some respects. For example, we would recommend that subsection (c) (1) of proposed section 383 be amended to provide authority for a panel established by proposed section 382 to itself dismiss a complaint, in addition to recommending dismissal or further investigation. Further, we believe that S. 1423 should expressly reaffirm the authority of the judicial councils of the circuits to deal with inappropriate judicial conduct by formal or informal action, and suggest that this might be accomplished by allowing the circuit a reasonable period of time to act with respect to any complaint before that complaint is referred to the circuit panel pursuant to section 382 of S. 1423. Other changes not incompatible with the objectives of S. 1423 may be proposed.

"Because such legislation is a matter of great import to every federal judge, the Conference directs that:

- Copies of the February 3, 1978 committee print and accompanying report be transmitted to all judges with a request that their views be filed with the Administrative Office by April 10, 1978; and
- Those views be reviewed and an appropriate report

## JUSTICE DEPARTMENT SEEKING RESEARCH ON FEDERAL SENTENCING

The Department of Justice recently issued a formal Request for Proposals to undertake research aimed at formulating sentencing guidelines for federal offenses.

The request was prepared by the Administrative Program Management staff of the Department. It calls for sentencing research in anticipation of the enactment of the Criminal Code Reform Act of 1978 (S. 1437 and H.R. 686) which would create a seven-member independent sentencing commission in the Judicial Branch. The main function of the commission will be to develop and promulgate guidelines to assist federal judges in sentencing.

The research proposal calls for the collection and analysis of data on federal offenders and other related data. Among the major tasks outlined in the proposal are: (1) the development and analysis of the logic underlying the structuring of alternative sentencing guidelines systems; (2) the collection of data on a sample of federal offenders sentenced since 1960 in order to analyze and assess the extent of sentencing disparity; (3) surveying federal justice personnel as well as individuals accused and convicted of federal offenses.

(See RESEARCH, page

prepared and transmitted to the Senate Judiciary Committee by May 1, 1978, and

- The Committee on Courts and Administration is instructed to continue its evaluation of the legislation, taking into account the responses of the judges in consideration, and to report its recommendations to the Congress as promptly as possible."



(RESEARCH, from page 2)

determine each subgroup's views regarding, among other things, what are appropriate and inappropriate sentences for federal offenses; and (4) surveying a sample of the U.S. adult population over the age of sixteen to generate data on regional, class, and other demographic differences in perceptions of appropriate sentences and the deterrent effect of alternative sentences for federal offenders.

The sentencing research is to be done under the guidance of an advisory board which will meet quarterly to review work progress and approve work plans. In addition to members of the Attorney General's Advisory Corrections Council, the research proposal requires that a representative of the Federal Judicial Center and such other members as the contractor feels are appropriate will serve on the advisory board.

The deadline for submission of proposals in response to the Justice Department's request was the end of this month. The final report must be completed in eighteen months following the award of the contract.

ROBINSON, from page 1)

Committee on the Administration of the Criminal Law. He is a member of the American Bar Association and the American Law Institute and had served as chairman of the National Conference of Federal Trial Judges from 1973 to 1974.

Third Branch

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## JUDICIAL FELLOWS PROGRAM SEEKING CANDIDATES FOR 7th YEAR

The Judicial Fellows Program is seeking candidates for the 1979-80 year, the seventh year that the program has been in existence.

Highly talented young professionals are invited to apply for the program which is similar to the White House and Congressional Fellowships and attracts outstanding applicants with multidisciplinary backgrounds. At least two fellows will be chosen to spend 1979-80 observing and contributing to projects designed to improve judicial administration. In addition, the program is designed to attract individuals who will not only make a contribution during their Judicial Fellowship year but will contribute in the future to judicial administration.

The program is now entering its seventh year. It is administered by the National Academy of Public Administration. It was instituted through grants from the Ford Foundation, the Edna McConnell Clark Foundation, and the American Bar Endowment.

Fellowship applicants should have at least one post graduate degree, two years of professional experience, and, preferably, familiarity with the judiciary. Salary is negotiable based upon the salary structure of the Federal Judicial Center as well as the candidate's salary history. Fellowships begin in September and have a one year duration. The deadline for applications is November 6, 1978.

Information regarding application and literature describing the Program are available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543.

## FEDERAL JUDICIAL CENTER BOARD REPORT ON LIBRARY STUDY APPROVED BY JUDICIAL CONFERENCE

At its March 9-10 meeting, the Judicial Conference of the United States approved a report submitted by the Board of the Center on the federal court library system, based on a study conducted at the request of the Conference.

The report contains 19 specific recommendations relating to federal court libraries, all aimed at modernizing procedures used to acquire and deliver law books, to speed up the process and to bring new techniques and equipment into the system. Also included is a recommendation for a new position in the Administrative Office for a professional to devote full time to handling federal court libraries and, more broadly, other research services.

The Administrative Office was asked to budget for local discretionary funds so that each federal judge would have available "a relatively small but definite amount" to purchase law books for official use directly from vendors.

In the belief it is now timely to reconsider the list of standard holdings for chambers and central libraries, the report recommends that a committee of the Judicial Conference review the lists currently being used by the Administrative Office to establish libraries for all judicial officials in the system.

William E. Foley, Director of the Administrative Office and a member of the Federal Judicial Center Board, said following the meeting of the Conference that he endorsed the Board's suggestions and that he hoped to immediately start implementation of at least some of the recommendations.





## NATION'S PRESS DEBATES IMPROVEMENT OF TRIAL ATTORNEYS' COURTROOM PERFORMANCE

Following the Chief Justice's Annual State of the Judiciary Address to the American Bar Association February 12, newspapers throughout the nation have discussed the questions which he raised concerning the need to establish minimum requirements for trying cases in American courts.

The Chief Justice said, "To treat a bar certificate of admission to practice law as a passport to try any and every kind of a case in any court makes no more sense than to say that a medical school degree qualifies the holder to perform every kind of surgery."

Editorial comment was widespread and affirmative. Here is a sampling from major newspapers:

However, this should not be an argument of percentages, but rather of remedies.... Various remedies have been put forth, such as greater use of apprentice-style law school teaching, private law firm clinics, and second bar examinations to qualify specifically for trial practice. Members of the bar... would do better to explore these and other methods of improving the profession than to argue over the exact percentage of incompetence among lawyers.—*The Portland Evening Express*, Portland, Maine (February 15, 1978)

The Chief Justice is right in contending that a license to practice law in an office should not necessarily be a license to mangle cases in court. The idea that the lawyer is one of the few remaining generalists who can handle anything has been overwhelmed by the law's own complexity. The trouble with incompetence is that when it exists the victim is rarely the lawyer or the court, but rather some individual (or corporate) victim who may not even realize what happened.—*The Washington Post*, Washington, D.C. (February 16, 1978)

Burger's point is that young attorneys fresh out of law school aren't ready to take on major trial work, any more than newly minted M.D.s are prepared to perform open-heart surgery. More training is needed. We hope the bar association will come to see the wisdom of Burger's position, and take appropriate action.—*The Daily News*, New York, New York (February 14, 1978)

Actually, the percentages are not, or should not be, the issue. Regardless of the correct rate of incompetency, Mr. Burger has identified and publicized a weakness that should be treated. And his criticism was accompanied by a creditable remedy. He proposed once again that new lawyers not be permitted to try cases until they had been additionally certified for that speciality through further demonstration of the special

skills required.—*The Salt Lake Tribune*, Salt Lake City, Utah (February 14, 1978)

Detroit lawyers who are steaming over Chief Justice Warren Burger's estimate that 50 percent of U.S. trial lawyers are unfit to represent their clients might be even madder if they knew how many local judges agree.... One opinion: "I'd say that most of the lawyers I know are competent to handle most legal matters. But when it comes to trying a complicated law suit in court, Justice Burger understated the problem."—*The Detroit Free Press*, Detroit, Michigan (February 16, 1978)

We'll duck the argument about the approximate percentage of the inadequate or incompetent among trial lawyers. We have them in all lines of work, including newspapers and judges. Mr. Burger talks about improving judges' training too. The point here is better performance in what is often a rough game lawyers play.—*The Evening Bulletin*, Philadelphia, Pennsylvania (February 15, 1978)

William B. Spann, Jr., ABA President, called Burger's evaluation "grossly disproportionate," but conceded that perhaps 20 percent of trial lawyers are unqualified.... He (the Chief Justice) replied, "If... 20 percent are incompetent, we ought to be doing a great deal more about it than we have up till now." That has been the Chief Justice's essential point all along, and the ABA should meet his criticism for what it is worth.—*The Los Angeles Times*, Los Angeles, California (February 16, 1978)

Burger has been hammering away at this theme—and the larger theme of more efficient judicial procedures—for years, even before he became Chief Justice. The consumers of justice—the public—have the

right to expect that the reforms he preaches become reality.—*The San Francisco Examiner*, San Francisco, California (February 16, 1978)

Chief Justice Warren E. Burger hit some ultra-sensitive nerves when he said that only about half of the lawyers are qualified to represent their clients in court. The wonder of it is that it has taken so long for someone in such a high place to say it.—*The Kansas City Times*, Kansas City, Missouri (February 23, 1978)

One would hope that the chief justice of the United States would exhibit "judicial restraint" not only on the bench but in all his public utterances. It does not enhance the prestige of the Supreme Court for any of its nine members, and particularly the presiding justice, to verbally "shoot from the hip" or to make unsubstantiated allegations.... For ourselves, we strongly applaud Chief Justice Burger's record on the Supreme Court; he takes a view of the Constitution that we think is sound and in the best interest of the nation. But his statements, which we have referred to do not do credit to the Supreme Court or to its top justice. A more "judicial restraint" off the court might well be in order.—*Times Dispatch*, Richmond, Virginia (February 14, 1978)

The traditional remedies for failure in advocacy and of justice are appellate review and professional disciplinary procedure. The former is cumbersome. The latter is in urgent need of strengthening. A third remedy which is gaining deserved popularity is that of mandatory continuing professional education—among all lawyers. This principle should be considered on a national as well as a state-by-state basis.—*The Philadelphia Inquirer*, Philadelphia, Pennsylvania (February 15, 1978)

Burger is asking that lawyers be qualified and competent before some poor client's fate and bankroll is placed in their care in a court of law. Seems reasonable enough—unless you're a lawyer who believes in image building. Like any other trade, the law business has to have its statistical share of bunglers and incompetents. It would seem to be in the interests of its practitioners to upgrade things.—*The Philadelphia Daily News*, Philadelphia, Pennsylvania (February 14, 1978)

First, it should be noted that [the Chief Justice] referred not to all lawyers, but only



trial lawyers, who make up about 10 percent of the 375,000 active U.S. practitioners. And then only part of the trial bar. Some past news stories failed to make that distinction.—*The Minneapolis Star*, Minneapolis, Minnesota (February 15, 1978)

he call for standards for trial lawyers only touches the surface of the deeper and even more divisive issue confronting the legal profession: specialization. Many lawyers develop specialties—tax law, divorce law, patent law to name a few—but there are, with few exceptions, no standards set in these areas.... The American bar has generally responded well to demands on the legal profession. Lawyers have an excellent opportunity to reverse this negative perception by adopting not only the minimum standards for trial lawyers called for by the Chief Justice, but also by carrying out work to establish standards for the entire profession.—*The Evening Journal*, Wilmington, Delaware (February 14, 1978)

the ABA should launch a major study of the need for certification and use its tremendous political clout to set up firm standards.—*The Charlotte Observer*, Charlotte, North Carolina (February 15, 1978)

regardless of the level of competence among the nation's trial lawyers, it's refreshing to see the Chief Justice... take an interest in lower courts and the quality of legal services provided in them. The issue is precisely what percentage of the lawyers who represent clients in court are qualified to do so; it's what to do about those who aren't.—*Newsday*, Garden City, New York (February 16, 1978)

arger is more right than he is wrong in his spoken views of the legal profession and court system. Anyone who has endured delays, and shouldered the costs, of a court action has reason to wonder if justice is not only blind but bungling.... A poll would show that most Americans overwhelmingly share his views.—*The Arizona Republic*, Phoenix, Arizona (February 14, 1978)

ce the ABA gets done being mad, it should explore the Chief Justice's idea. He compares lawyers to general practitioners in medicine and says that before they get into court they should have the legal equivalent of a surgeon's training... That kind of reform here would enable lawyers to specialize, sharpen their skills in one phase

## MAGISTRATES DISPOSE OF 150 CASES IN UNIQUE "CRASH" PROGRAM

In a unique "crash" program, three part-time magistrates traveled to Little Rock, Arkansas recently to dispose of some 150 cases which had been on file for more than one year.

The magistrates, Richard W. Peterson (S.D. Iowa), William Walker and Ned Stewart, Jr., (W.D. Ark.), spent about three months holding pretrial conferences to prepare the cases for full hearings before judges of the Eastern District of Arkansas.

All the cases in the program were civil cases and included negligence, insurance, alleged racial discrimination, tax and admiralty causes. The three visiting magistrates divided the cases among themselves for pretrial, each taking about 50 cases.

The cases were then sent for hearing on a pretrial schedule of approximately two weeks span with a typical court day assigned four to five cases. The magistrates used the following guidelines to insure expeditious handling of the cases:

- In instances in which additional discovery was

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of the system and (presumably) do a better job.—*The Register-Guard*, Eugene, Oregon (February 15, 1978)

The performance of lawyers in and out of courtrooms is of serious concern to all "consumers" of legal assistance. The performance of lawyers in courtrooms is also of special concern to the general public. The public's tax dollars are being wasted when the courts are burdened by lawyerly ineptitude.—*The Baltimore Sun*, Baltimore, Maryland (February 15, 1978)

The Chief Justice has spoken on behalf of the consumer. Trial work is a difficult and intricate work involving various skills and proficiencies. They are not the instant gift of every person who has passed a state bar examination, and the lawyers know it themselves.—*The Home News*, New Brunswick, New Jersey (February 14, 1978)

required, a close limitation of the time span for additional responses was imposed.

- If additional time was required for the filing of additional briefs, exhibits, and witness lists, specific filing dates were set.

- In a number of cases, unresolved discovery requests or motions which had not been ruled upon appeared. The case was referred to the local judge to whom the case had been assigned when it was first filed.

- In referring outstanding matters to a local judge for disposition, the magistrates found that the judge's law clerks were particularly helpful. With their assistance, a procedure was developed through which the law clerks secured the ruling of the judge and then prepared the court order or, if required, time was arranged for presentation of the question to the court by counsel.

Magistrate Peterson, in his report on the "crash" program, pointed out the following conclusions and recommendations:

1. Coordination between the judge and the magistrate is of greatest importance in developing the pretrial notice requirements and determining the manner of disposing of outstanding motions and discovery matters.

2. There appears to be a basic psychological value in having out-of-district magistrates conduct the pretrial hearings with local counsel.

3. About one-half hour is sufficient time for pretrial in the normal case. Also, the assistance of deputies from the Clerk's staff is crucial to the case, not only at the hearing itself when there should be a courtroom clerk for the purpose of taking minutes of the hearing, but also to maintain a log of cases and help to control them. The deputy becomes familiar with the cases handled by the magistrate and can deal with them very effectively.



## ADMINISTRATIVE OFFICE PRESENTS REPORT ON 1977 FEDERAL COURT ACTIVITY

The Director of the Administrative Office of United States Courts, William E. Foley, presented a brief summary of the activities of the courts of appeals and district courts for the calendar year 1977 to the Spring meeting of the Judicial Conference.

Here are pertinent excerpts from his report.

### U.S. Courts of Appeals

During the twelve month period ending December 31, 1977, the pending caseload in the U.S. Courts of Appeals rose 5.1% compared to a year earlier despite a substantial 7.4% rise in cases closed. Although newly docketed cases increased by only 61, or 0.3% compared to the same period a year ago, the 18,916 filings exceeded the 18,128 terminations by 788, pushing the current pending figure for December 31, 1977, to 16,276.

### U.S. District Courts

Civil filings in the U.S. District Courts rose to 135,628 during the twelve month period ending December 31, 1977, or 5.3% above the number filed during the comparable period last year. Terminations increased 7.4% over the previous year but fell short of filings by 14,180 cases. This resulted in a record high civil pending caseload of 163,798 on December 31, 1977, 9.5% higher than a year earlier.

The 5.3% rise in civil filing during the twelve month period ending December 31, 1977, was due in large part to a 52.2% increase in real property action. This rise was a result of land condemnation cases which rose 163.9% from 2,249 to 5,936 (most of the rise occurred in the Southern District of Florida).

Social Security, other than



The Circuit Executives held their annual meeting this month in Washington. Pictured above in the Administrative Office Conference Room are (seated, L to R) Charles E. Nelson (CA-DC), R. Hanson Lawton (CA-8), FJC Director A. Leo Levin, and Collins T. Fitzpatrick (CA-7). Standing are (L to R) James A. Higgins (CA-6), William B. Luck (CA-9), Robert D. Lipscher (CA-2), Samuel W. Phillips (CA-4), Robert J. Pellicoro, Chief, A.O. Clerks Division, Thomas H. Reese (CA-5), William A. Doyle (CA-3), Robert H. Hartzell, Chief, A.O. Administrative Services Division, and Paul R. Tuell, Chief, A.O. Procurement and Property Management Branch. (Not pictured: Emory G. Hatcher (CA-10) who attended the meeting but was not present when the photograph was taken.)

"Black Lung", showed a substantial increase of 33.1%, while "Black Lung" filings declined 66.2% from 4,171 in 1976 to 1,411 cases this year. Prisoner petitions were also up as 9.8% more cases were filed than in the previous year. This included a 24.8% increase in motions to vacate sentence and a 22.8% rise in prisoner civil rights.

There were several other major categories which showed increases in filing activity during the twelve month period. The most significant of these was a 14.2% increase in tax suits and a 13.6% increase in protected property rights litigation which includes copyright, patent and trademark cases. Personal Injury cases were up by nearly 4% and civil rights litigation increased a modest 3.2%.

Other than "Black Lung" the only major litigation classification to exhibit a substantial decrease in filings during the twelve month period was I.C.C., most of which involve freight damage. These cases fell from 3,316 to 2,656—a drop of nearly 20%.

### Criminal Cases

During the twelve month period ending December 31, 1977, criminal case filings in

the district courts dropped 38,397 or 8.4% below the number filed during the comparable period last year. Case terminations also decreased, by 7.6%, but exceeded filings by 2,371 cases. This resulted in a December 31, 1977, pending figure of 16,961 cases, 12% below the pending caseload of December 31, 1976.

The overall change in criminal filings was a result of decreases in nearly every major offense classification. Filings for auto theft continued to decline and nearly 28% fewer cases were filed than in the previous year. Drug law violations also exhibited a substantial decrease this year as 24.5% fewer cases were filed. Overall robbery filings dropped by 13% as bank robbery fell by more than 20% cases compared to last year.

The decreases in case filings by major offense categories over-shadowed the few increases which did occur. However, there were a few offenses which showed substantial increases during this twelve month period.

Forgery and counterfeit prosecutions rose from 3,641 to 3,938—an increase of more than 8%. Weapons and firearm filings rose by nearly 300 or 10.5% above the number from



last year. Fraud also showed increased filings this year by nearly 6%.

### Bankruptcy Cases

During the twelve month period ending December 31, 1977, 208,433 bankruptcy cases were filed, a decline of 1.1% compared to the same period a year ago. Terminations also dropped, 7%, but exceeded filings by 17,587 cases. This resulted in a pending caseload of 245,557 cases on December 31, 1977, 6.7% lower than the 263,144 cases recorded on December 31, 1976.

### Petit Juror Utilization

The number of petit jurors available to serve on jury trials decreased 1.5% from 587,778 in 1976 to 578,802 in 1977. There was a corresponding decrease of 2.2% in the number of jury trial days with 29,337 in 1977 compared to 29,991 in the previous year. While the percentage of jurors selected or serving remained virtually unchanged at 60.5%, the percentage of jurors not selected, serving or challenged increased to 24.2% compared to 23.7% in the previous year. The Juror Usage Index exhibited a slight increase from 19.60 in 1976 to 19.74 in 1977.

### Grand Juror Utilization

In 1977 there was a slight increase in the number of grand jury sessions and the number of grand jurors attending sessions. The number of grand juries in existence, however, decreased from 650 in 1976 to 630 in 1977. On the average, 19.8 jurors attended each grand jury session which lasted an average of 5.29 hours.

### Federal Probation System

The Federal Probation System experienced increases in both persons received for supervision and persons removed from supervision during the year ending December 31, 1977. The

46,990 persons received was nearly 8% above the number recorded in the previous year while the 46,164 persons removed was higher by nearly 3%. This combination resulted in a supervision caseload of 65,105 persons on December 31, 1977, 1.3% above the number recorded one year earlier.

### U.S. Magistrates

Total matters handled by U.S. magistrates nearly reached the 300,000 mark during the year ending December 31, 1977, as activity increased by 15% over the previous year. This increase was due primarily to the 35.8% rise in additional civil duties and the 25.9% increase in additional criminal duties.

Trial jurisdiction cases also showed a substantial rise as nearly 12% more defendants were disposed of than in the previous year. The overall increase in matters handled by magistrates and especially the increase in additional duties reflects the growing trend in using magistrates to assist district judges in the disposition of the backlogged dockets of the district courts.

### Federal Public/Community Defenders

Cases opened by Federal Public Defenders during the twelve months ending December 31, 1977, increased by 6% over the number opened last year. This was accompanied by an 11.3% increase in the number of cases closed and resulted in a decrease of 10.6% in the pending caseload for these offices.

The Community Defender organizations also experienced increases in case openings and case closings of 5.2% and 7.5%, respectively, and a decline of 9.7% in their pending caseload.

### TEXAS COURT USING MULTIPLE VOIR DIRE SAVES \$21,140

The U.S. District Court for the Western District of Texas, El Paso Division, saved \$21,140 during calendar year 1977 by using multiple voir dire, the technique of selecting several juries simultaneously for use during trials scheduled for a predetermined period.

Judge William S. Sessions said the statistics concerning the use of multiple voir dire were kept solely for the purpose of establishing whether or not the Court was truly saving money as well as making the best possible utilization of juror time in the process.

He pointed out that Judge John H. Wood, Jr., who is in El Paso only one week each month, and is assigned 25 percent of the El Paso civil and criminal docket, was able to effect a savings of \$3,360 for 1977.

"If only one out of four active District Court judges was persuaded to utilize the multiple voir dire, the monetary savings alone would be impressive," Judge Sessions said in a letter to Chief Judge Reynaldo G. Garza (W.D. Tex.). Judge Garza, an advocate of multiple voir dire, has discussed the technique at FJC Seminars for Newly Appointed District Judges.

"My use of multiple voir dire is not premised upon money savings alone, but upon what I perceive to be the proper orderly processing of cases on the docket and facilitating the maximum use of juror time," Judge Sessions continued. "Ultimately it allows the court, the attorneys and the juror to plan their activity for an entire month, avoiding the unreasonable waste of time and money by lawyers and their clients, and, best of all, the avoidance of the 'trailing' docket where other cases are required to 'wait in the wings.'"





# DOJ FJC calendar

- Mar. 28-29 Time Management Seminar, Baltimore, MD
- Mar. 30-31 Workshop for District Judges [Fifth (W) Circuit], Austin, TX
- Apr. 3-5 Management Training for Supervisors, Toledo, OH
- Apr. 3-5 Workshop for Docket Clerks, Atlanta, GA
- Apr. 7-8 Workshop for District Judges (CA-2), Hartford, CT
- Apr. 10-11 Workshop for Personnel Clerks, Washington, DC
- Apr. 10-12 Management Training for Executives, New York, NY
- Apr. 10-13 Crisis Intervention Seminar for Probation Officers, Nashville, TN
- Apr. 11-13 Management Training for Supervisors, Portland, OR
- Apr. 12-14 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Denver, CO
- Apr. 14 Time Management Seminar, Portland, OR
- Apr. 17-19 Seminar for Assistant Federal Defenders, New Orleans, LA
- Apr. 17-19 Advanced Management Seminar for Probation Clerks, Minneapolis, MN
- Apr. 17-19 Advanced Seminar for Chief and Supervisory Pre-trial Services Officers, Washington, DC

# PERSONNEL

## RESIGNATION

William H. Webster, U.S. Circuit Judge (CA-8), Feb. 22

## DEATH

Willis W. Ritter, U.S. District Judge, D. Utah, March 4

## NEW FJC PUBLICATIONS AVAILABLE:

Order of Summation in Civil Cases. FJC-SP-77-7. Legislative History of Observation and Study. FJC-SP-77-8.

- Apr. 23-26 Fifth Circuit Conference, New Orleans, LA
- Apr. 24-26 Seminar for Bankruptcy Clerks, Kansas City, MO
- Apr. 24-26 Management Training for Supervisors, Houston, TX
- Apr. 25-27 Seminar for Chief Probation Office Clerks, Memphis, TN
- Apr. 27-29 Seminar for Bankruptcy Judges, Kansas City, MO

## EQUAL JUSTICE UNDER LAW April Broadcast Dates

Public Broadcasting Service will re-air the two *Equal Justice Under Law* specials the two Sundays prior to Law Day, May 1, 1978. Check your local listings for time.

*Mr. Chief Justice*, Sunday, April 23, 1978. Dramatization and comment on Marbury v. Madison, McCulloch v. Maryland, and Gibbons v. Ogden.

*The Trial of Aaron Burr*, Sunday, April 30, 1978. Defendants' rights and presidential privilege in the context of the Aaron Burr treason trial.

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## THE THIRD BRANCH

VOL. 10, No. 3 MARCH 1978

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LAW LIBRARY

## ADVOCACY STUDY RELEASED

A major federal study just released reveals that 40 percent of federal trial judges believe that the quality of advocacy in their courts is a serious problem. In the view of federal judges presiding at trials, inadequacy was found in at least one of the lawyers out of every six trials rated by the judges.

The study, *The Quality of Advocacy in Federal Courts*, was designed and conducted by the Federal Judicial Center and included judges' evaluation of 2800 courtroom performances of lawyers in federal trial and appellate courts. Responses were obtained from 80 percent of all federal district and circuit judges, as well as a national sample of lawyers practicing in federal courts. Nearly 500 judges responded to the Center's questionnaires.

As a result of the study, a committee of the Judicial Conference of the United States is developing proposed standards for admission to practice in federal trial courts. The committee chairman, Chief Judge Edw. Devitt of the Minnesota federal district court, presented a progress report on the results of the study to the Judicial Conference at its spring meeting on March 9th.

Judge Devitt said that in addition to the federal judges who were surveyed, over 1,000 lawyers also responded to questionnaires and that they closely agreed with the judges. Both lawyers and judges agreed that the major effect of inadequate representation at trial is the failure to protect client interests. At the appellate level, the major effect of inadequate performance was

reported to be unnecessary burdens on judges and staff.

The study revealed that 8.6 percent of the trial lawyers performances were rated inadequate by the judges, 16.7 percent were rated as "adequate but no better" while about 21 percent were regarded as "first rate" and about 47 percent as "first rate" or "very good."

In the district courts, the study showed that the percentage of performances rated as inadequate is higher among young lawyers than among older, higher among those who have not had previous federal trial experience than among those who have, and higher among those who practice alone than among those in group practice.



Sir Garfield Barwick

Sir Garfield Barwick, The Chief Justice of Australia, makes a point while meeting with FJC Director A. Leo Levin during his second visit to the Center on March 29.

### JUDGESHIP BILL CONFERENCE COMMITTEE APPOINTED

The Senate and House of Representatives have appointed conferees to work out the differences in the two omnibus judgeship bills passed by both Houses.

However, there has not been any meeting scheduled yet and it is questionable if there will be any final action on the bills until after the Senate debate on the Panama Canal treaties is concluded.

(See STUDY, page 2)

(See JUDGESHIP, page 2)



(STUDY, from page 1)

In the courts of appeals, the study did not reveal convincing evidence of similar relationships. Moreover, in the district courts, the study did not find that inadequate performances were heavily concentrated in any identifiable groups of lawyers, hence there is no suggestion that the problem of inadequacy can be attacked by focusing on one age group or one form of law practice.

The skills in which trial judges believe there is the greatest need for improvement are proficiency in the planning and management of litigation and technique in examining witnesses.

The skills in which appellate judges believe there is the greatest need for improvement are ability to set forth the important facts and issues in briefs in a comprehensible manner, judgment in identifying points on which to focus in briefing, skill in making distinctive use of oral argument, mastery of the law important to the particular case, and mastery of the record from the lower court.

Among the remedies that are being considered are a federal court bar examination, improved and expanded training in law schools, requirements for a minimum amount of trial experience before full admission to the federal district court, continuing legal education, recertification of both knowledge and experience requirements, and peer review.

Judge Devitt said the committee expects to present its tentative recommendations to the Judicial Conference within the next year and following that, the committee will hold regional public hearings to afford interested parties an opportunity to express their views on the proposed recommendations.

The committee consists of twenty-four members and three law student advisers. Members

include legal educators, practicing lawyers and federal judges from the trial and appellate courts.

(JUDGESHIP, from page 1)

The two bills differ primarily in side issues rather than the total number of judgeships which they would create. The Senate bill, S. 11, would create a new Circuit Court in the South by splitting the existing Fifth Circuit while the House bill, H.R. 7843, calls for the President to promulgate merit selection standards prior to appointing any new district judges.

### CCPA SCHEDULES JUDICIAL CONFERENCE

Chief Judge Howard T. Markey of the United States Court of Customs and Patent Appeals announced that the Court will hold its fifth Judicial Conference in Washington on May 18.

In addition to members of the Court, members of the Patent and Trademark Boards of Appeal and the International Trade Commission, officials of the Treasury, Justice and Commerce Departments, United States Customs Service and members of the Bar have been invited to attend.

Among the topics which will be discussed are patent and trademark litigation from the viewpoint of the judges of the Court, the year in review: CCPA patent and trademark current developments, and the question whether the antidumping act is a fair approach to unfair trade or an unfair approach to fair trade.

FBI Director William H. Webster will address the Conference.

For information regarding registration, contact George E. Hutchinson, Clerk, U.S. Court of Customs and Patent Appeals, 717 Madison Place, N.W., Washington, D.C. 20439.

### NEW YORK COURT LAUNCHES ADVOCACY TRAINING PROGRAM FOR LAW STUDENTS

Chief Judge David N. Edelstein (S.D. N.Y.) announced that his Court has begun a Special Training Program for senior law students attending law schools in his District.

Participating law firms will agree to hire at least one student who is in his or her senior year in law school or to hire students on a ratio of one student for each twenty litigators working in the firm. The students will be selected on the basis of recommendation of the dean of the particular law school or someone designated to act in the dean's behalf.

A committee of judges and lawyers will review recommendations of the participating law schools and give special attention to the law student's interest and aptitude for litigation in selecting and assigning the student to participating law firm.

Each law firm will agree that the law students selected to participate in this program will be given the opportunity to work with and under the direction of an experienced litigator in the preparation and trial of cases ensuring that where possible the student be allowed actual time in court.

The special training program will be distinct from the law firms' current utilization of law students as summer associates and winter law clerks. The participating firms will commit themselves to the express mandate of this program—the training of future litigators.

Therefore, the participating law students should be given assignments designed to maximize the litigation training envisioned by the special training program. The participating law firm will make an advance commitment to hire the student upon graduation.

(See ADVOCACY, page 1)



ADVOCACY, from page 2)

Chief Judge Edelstein said that each district judge in his district has been encouraged to hire one law student who is finishing his senior year in law school as a law clerk on a part-time basis and the Court is considering a local rule which would allow law students to appear in Court. The rule will be broad enough to include students who participate in other clinical programs such as those of the Legal Aid Society and the Office of the United States Attorney General for the Southern District of New York.

Chief Judge Edward J. Devitt, who is chairman of the Judicial Conference's Committee to consider standards for admission to practice in the federal courts, upon learning of the program, wrote Chief Judge Edelstein of his approval and commented, "I like all aspects of our plan but particularly the one getting the principal law firms to hire third-year law students to work under experienced courtroom litigators. I agree with you that experience is the key to making a good courtroom advocate. You deserve credit for instituting this move."

In 1968, the future Chief Justice of the United States, Warren E. Burger, in his continuing efforts to improve the advocacy bar, observed: "... the best, if not the only, way to learn to try a law suit is to watch a skilled professional do it and to work with and under this direction in the process, preparation, and trial of cases in the courtroom."

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## Blueprint for the Future

### WILLIAMSBURG CONFERENCE ON THE JUDICIARY

After almost two years of planning, the National Center for State Courts last month held its Conference on the Judiciary, referred to as "Williamsburg II" because it was considered a follow-up of the first Williamsburg Conference on the Judiciary held in 1971.

In addition to members of the judiciary, other disciplines were represented, including businessmen, court administrators, representatives of the press and law professors. An international flavor was brought to the conference through the participation of the Right Honorable Lord Diplock, Lord Chief Justice Widgery and Master I. H. Jacobs—all from England. Australia was represented by Sir Garfield Barwick, their Chief Justice, and Mr. Justice Dennis Mahoney of the Supreme Court of New South Wales; Canada through attendance by their Chief Justice, the Right Honorable Bora Laskin; and from Scotland Lord Emslie.

Ten workshops individually took up discussions on papers prepared by six task forces: Public Image of the Courts, Courts and the Community, Courts and the American System of Government, Internal Organization and Procedures of

the Courts; International Models for Court Improvement and Implementation of Court Improvements.

The discussions brought forth a variety of concerns among the state judges for the operation of their courts and the delivery of justice to their citizens.

Of particular interest was the publication of the survey on the courts, and the results of what the public thinks about their operation as well as the judges and the lawyers who are professionally engaged in the work of the courts. The survey was done by the Yankelovich, Skelly and White firm. Alfred Friendly, the task force chairman for this subject, addressed the plenary session and introduced Daniel Yankelovich who, together with Arthur H. White of that firm, explained how the survey was conducted.

The highlight of the meeting was the dedication of the new headquarters building for the National Center for State Courts, preceded by an address by Chief Justice Burger, who commended the work of the State Center and the state judges who since 1971 have dedicated their efforts to bringing this organization into being.

### SENATOR EASTLAND RETIRING SENATOR KENNEDY TO HEAD JUDICIARY COMMITTEE

Mississippi Senator James O. Eastland announced that he will retire effective January 3, 1979, thus allowing Massachusetts Senator Edward M. Kennedy to assume the Chairmanship of the

Senate Judiciary Committee.

Senator Eastland was elected to the Senate in 1943 and has served as Chairman of the Committee since March 2, 1956.





James A. McCafferty

### **McCAFFERTY APPOINTED CHIEF, A.O. STATISTICAL ANALYSIS AND REPORTS DIVISION**

Director William E. Foley of the Administrative Office of United States Courts has appointed James A. McCafferty as Chief of the Statistical Analysis and Reports Division.

The Division provides the status of the dockets of each court; prepares, each quarter, statistical data and analyses of the judicial business of the courts; prepares supporting statistics and forecasts for other Divisions of the Administrative Office. The Division also provides the statistical and analytical expertise required for handling legislative impact statements, workload statements and for general statistical inquiries by persons seeking judicial statistical information.

This Division is divided into two branches. The Statistical Branch enters statistical information furnished by the courts into mini-computer terminals while the Analysis and Reports Branch handles the manual reports submitted by the courts which are analyzed and eventually become part of the reports prepared by the Branch.

Currently, the Division processes over a million and a half separate statistical documents yearly including wiretap reports, magistrate reports,

### **SENTENCING PROVISIONS OF PROPOSED NEW CRIMINAL CODE ANALYZED**

The Probation Division of the Administrative Office of United States Courts has prepared a detailed analysis of the sentencing provisions of the proposed new federal criminal code, S. 1437, which was passed by the Senate January 30.

The bill has been referred to the House Judiciary Subcommittee on Criminal Justice which is holding hearings on the measure.

Here is the analysis prepared by the Probation Division.

The bill requires the probation officer to make a presentence investigation and file a report with the court under the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure. Rule 32(c) has been amended to require that the report contain, in addition to the information presently required, information about the category of offense and the category of defendant under guidelines and policy statements established by a sentencing commission. Further, the report must contain the probation officer's estimate of the range of the sentence established by the sentencing commission for such an offense committed by such a defendant. Finally, the report must contain the probation officer's opinion regarding any aggravating or mitigating circumstances which indicate a sentence above or below guidelines established by a sentencing commission. The disclosure provisions of Rule 32(c) have been broadened to require that the report,

juror utilization forms, matters and cases under advisement and cases under submission, visiting judge reports, reports regarding three-judge courts, passports and public defender reports.

Mr. McCafferty is a career employee of the Administrative Office. Prior to his appointment, he was Chief of the Operations Branch of the Administrative Office, Division of Information Systems.

Before he joined the Administrative Office, he was a criminologist in the Bureau of Prisons Research Division from 1951 to 1963.

including the probation officer's recommendation as to sentence, be disclosed to the defendant or his counsel if represented.

The section establishing discretionary conditions of probation has been amended to enable the court to order a term of incarceration of 1 year or the maximum term provided by law for the offense, whichever is less, to be served as a condition of probation. The bill originally provided for a term of incarceration of not more than 6 months as a condition of probation. The amendment to extend the term to 1 year was accompanied by the requirement that this incarceration must be served during the first year of the term of probation. "Statutory good time" is not earned on a period of incarceration served as a condition of probation.

The maximum terms of imprisonment are established at section 2301. An amendment was adopted which reduced the maximum term for all Class B, C, D, and E felonies. The Class B felony was reduced from 25 years to 20 years, the Class C felony was reduced from 12 years to 10 years, the Class D felony was reduced from 6 years to 5 years, and the Class E felony was reduced from 3 years to 2 years.

In what appears to be a statement of philosophic intent, the Senate adopted a series of amendments further restricting the Parole Commission's discretion to release a committed offender.

The first of these amendments eliminated the terms "parole ineligibility" as contained in the initial version of the bill and substituted a term of imprisonment in which the offender would be "eligible for early release." The difference between the original version and the amended version is essentially that in the former the Parole Commission could release an inmate after a period of 6 months unless the court established a specific period of parole ineligibility. In the amended version the Parole Commission cannot release an inmate unless the court has specifically established a period during which the inmate would be eligible for early release.

In the majority of cases the court will, at the time sentence is imposed, structure the sentence to include a release date. This congressional intent seems to be further clarified by an amendment to section 994 of Title 28 which establishes duties of the U. S. Sentencing Commission. At subsection (b) the bill provides that if a sentence specified by the guidelines includes a term of imprisonment the guidelines shall specify that the term of imprisonment is not to be subject to the defendant's early release, other than in an exceptional situation in which a term subject to a defendant's early release is necessary to satisfy the purposes to be served by the sentence and is consistent with the court's specific findings made pursuant to subsection (j).

Subsection (j) requires that the Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for purposes of providing a defendant with needed educational or vocational training, medical care, or other correctional treatment other than in an exceptional case in which imprisonment appears to be the sole means of achieving these purposes. If the court orders a commitment to imprisonment for purposes of treatment, reasons for such commitment must be



## SENATE SELECT COMMITTEE ON INTELLIGENCE ACTS ON SURVEILLANCE BILL

The Select Committee on Intelligence by a vote of 9-0 has approved the Foreign Intelligence Surveillance Act, as amended, which requires a court order for all national security electronic surveillance in the United States.

As amended, S. 1566 allows surveillance of a citizen or resident alien where a court finds probable cause that the person "knowingly" engages in spying activities that "may involve a violation of the criminal statutes of the United States."

The "may involve" provision is understood to allow sufficient leeway to detect foreign spy operations in this country.

The criminal standard applies to Americans who "knowingly" engage in covert action pursuant to the direction of a foreign intelligence service. Such activities must involve or be "about to involve" a federal crime.

The criminal standard also permits surveillance of Americans who "knowingly" engage in activities which "may be in preparation" for sabotage or terrorism for or on behalf of a foreign power.

States. The bill as reported out of the Senate Judiciary Committee on November 15, 1977, was amended to provide for a U. S. Sentencing Commission consisting of seven members, four of whom would be appointed by the President with the advice and consent of the Senate and the remaining three to be designated by the Judicial Conference.

S.1437 as passed by the Senate on January 30, 1978, provides for a U. S. Sentencing Commission consisting of seven members, four of whom will be appointed by the President after consultation with the Judicial Conference of the United States. The remaining three will be designated by the President from a list of at least seven judges submitted to the President by the Judicial Conference.

The bill states "that no United States person may be considered an agent of a foreign power solely upon the basis of activities protected by the First Amendment of the Constitution of the United States." Therefore, "preparation" for terrorism may not include merely the exercise of free speech.

With respect to foreign visitors to the United States, the Intelligence Committee amended the bill to insure that such foreign citizens will be treated the same as American citizens, unless they act on behalf of a foreign power which conducts clandestine intelligence activities contrary to the interests of the United States. In such a case, the visitor may be wiretapped if the circumstances indicate to a judge that he may engage in secret intelligence activities.

The bill establishes a special court composed of seven federal judges to issue orders approving each surveillance under the bill. A three judge appellate panel also is established. The Intelligence Committee's amendments provided that these judges shall serve for seven-year terms.

Intelligence Committee amendments strengthen the judges' authority to review Executive certifications that surveillance of Americans is necessary and to review how information about Americans is used. They also tighten the restrictions on use and dissemination of information about Americans, including information that is acquired "unintentionally."

Under the bill as amended, the Attorney General must fully inform the Intelligence Committees of the House and Senate concerning all electronic surveillance at least semi-annually. The Intelligence Committees also retain the







Participants in the Federal Defender Seminar

The Federal Judicial Center held a seminar for Federal Public and Community Defenders in San Francisco several weeks ago and William E. Foley, Director of the Administrative Office, chaired the meeting. Speakers included federal judges, defenders and prosecutors as well as private practitioners. The topics covered during the meeting ranged from jury selection and appellate practice to the proposed revisions of the federal criminal code (S. 1437). The seminar also included workshops on the operation of the defender system and reports from the various defenders.

#### PRISONER EXCHANGE PROGRAMS PLANNED FOR CANADA AND BOLIVIA

While the prisoner exchange program with Mexico is still underway the Department of Justice and the Administrative Office are laying the necessary groundwork for future prisoner exchanges with Canada and Bolivia.

In addition, West Germany is presently drafting legislation to allow prisoner exchanges with the U.S. and the State Department has been given the authority to begin discussions with Peru on the subject.

Last month, the second phase of the prisoner exchange program with Mexico was completed with forty-eight Americans returning to this country and thirty-six Mexicans returning to Mexico. Four U.S. Magistrates went to Mexico to hold verification hearings prior to the second exchange.

In the initial exchange last December, seven U.S. Magistrates held hearings in Mexico and 232 Americans returned to

this country while thirty-nine Mexicans returned to Mexico.

Benjamin R. Civiletti, then Assistant Attorney General of the Department of Justice Criminal Division, commended the Administrative Office last month for their work in the Mexican prisoner exchange program.

In a letter to Director William E. Foley, he wrote, "I wish to express the special thanks of the Attorney General for the superb cooperation and efforts of your Criminal Justice Act Division, Magistrates Division and your Probation Office in connection with the initial transfer of prisoners under the Treaty with Mexico on the execution of penal sentences."

A spokesman for the Embassy of Canada said that legislation has been introduced in the Canadian Parliament to implement the treaty with the U.S. on prisoner exchanges.

#### WRIGHT SUCCEEDS BAZELON AS CHIEF JUDGE

Chief Judge David L. Bazelon of the United States Court of Appeals for the District of Columbia Circuit announced March 28 that he was stepping down as Chief Judge. The new Chief Judge is J. Skelly Wright.

In a statement issued on the occasion, The Chief Justice said, "Chief Judge Bazelon has presided over one of the most important of the country's courts for many years, and it was my privilege to share thirteen years of association with him. His successor, Judge J. Skelly Wright, was also a valued colleague for many years, and I look forward to working with him in my capacity as Circuit Justice for this Circuit. I am glad Judge Bazelon will continue regular judicial duties."

Judge Bazelon has been Chief Judge of the Circuit since October 9, 1962 and a judge of the Court of Appeals since November 1, 1949. Judge Wright was appointed to the Circuit Court on April 16, 1962. Prior to his appointment to the Circuit Court, he served as a United States District Judge for the Eastern District of Louisiana from 1949 to 1962.

(SURVEILLANCE, from page 5)

authority to obtain additional information. The Senate Intelligence Committee is required to report annually to the Senate concerning implementation of the bill.

The proposed Foreign Intelligence Surveillance Act was previously approved by the Senate Judiciary Committee and now will be reported to the Senate floor for action.





The Conflict between Self-interest and Justice; a Bold Critique of the Adversary System. Marvin E. Frankel. 16 Judges' J. 8-11+ (Summer 1977).

• Disposal of Old Records: a Weighty Problem for Courts. 6 2 Benchmarks (Bulletin of the Indiana Judicial Center) 4-5+ (August 1977).

House Panel to Study Whether Courts are Best Place to Settle many Disputes. XXXV Cong. Q. 1229-34 (June 1977).

Hyperlexis, Our National Disease. Bayless Manning. 71 W. L. Rev. 767 (1977).

Internal Operating Procedures for the U.S. Court of Appeals for the Ninth Circuit. June 1, 1977.

Manual for Complex Litigation, with Amendments to June 1977. Pub. by Clark Hardman, Commerce Clearing House, Matthew Bender and West.

Manual on Appellate Opinions. B.E. Witkin. West, 1977.

Reform of Court Rulemaking Procedures. Jack B. Weinstein. Ohio State Univ. Press, 1977.

The Role of the Courts in Contemporary Society. Ruggero Aldisert. 38 U. Pitt. L. Rev. 7-76 (Spring 1977).

Some Reminders to Myself in Approaching the Big Case. Sam Pointer, Jr. 3 Litigation 5-6+ (Spring 1977).

Ten Commandments for the New Judge. Edward J. Devitt. 16 Ct. Rev. 14-18 (Oct. 1977)

Views from the Lower Court. Martin B. Rubin. 23 UCLA L. Rev. 8-64 (1976).

Who Should Conduct Voir Dire? The Judge, by Arthur J. Stanley, Jr; The Attorneys, by Robert G. Begam. 61 Judicature 5-5 (Aug. 1977).



**FJC Films**

**FJC CONTINUING  
EDUCATION AND TRAINING  
DIVISION FILMS AVAILABLE**

[The following films are available to members of the federal court system on a one-week loan basis. Contact Elizabeth Brennan, Educational Assistant, at 8-633-6024.]

Title: *"The Scar Beneath"*

Time: 30 minutes—16 mm.

Plot: This film depicts some of the behavioral changes brought about in a parolee after he has gone through a period of incarceration and has had facial surgery. Various roles of the probation officer, the Bureau of Prisons, the Board of Parole and the Vocational Rehabilitation Agency are depicted. The team approach to working with offenders is stressed.

Title: *"Parole Granted"*

Time: 50 minutes—16 mm.

Plot: This film was presented by the Armstrong Circle Theater with Douglas Edwards as the narrator, who is devoted primarily to explaining and illustrating the duties of the United States Probation and Parole Office. It shows the probation officer working with an offender's family, engaging in parole supervision, and advising the court through the medium of the presentence investigation.

Title: *"Apples Don't Fall Far From The Tree"*

Time: 55 minutes—16 mm.

Plot: This film was produced by the Four Star Theater and stars David Wayne as a prisoner in a state institution in California. This film shows a parole officer attempting to locate the father of a young boy. Also shown are some of the activities of the California Adult Authority working in placing a parolee who is physically handicapped in meaningful employment.

Title: *"The Eye Of The Beholder"*

Time: 27 minutes—16 mm

Plot: This film is concerned with portraying the life in a day of Michael Gerrard, an artist, as seen through the eyes of five persons. The film has two parts and in the second part, the film illustrates how Michael Gerrard sees himself. This film is particularly helpful in working with small discussion groups, students, and individuals interested in attitude formation.

Title: *"The Odds Against"*

Time: 32 minutes—16 mm.

Plot: This is a documentary film which portrays the story of a 20 year old male from arrest to a parole hearing. The viewer is taken through each of the procedures from arrest, detention, trial, sentencing, imprisonment, and parole.

Title: *"The Price Of A Life"*

Time: 29 minutes—16 mm.

Plot: Documentary on probation. Portrays the presentence investigation, sentencing, and problems of supervision and revocation as revealed in the work of a probation officer with a young adult offender.

Title: *"The Revolving Door"*

Time: 28 and 1/2 minutes—16 mm.

Plot: Documentary depicting the problems faced by the lower courts in dealing with the 5 million misdemeanants arrested each year in the U.S. and the limitations in facilities and programs in most jails.

Title: *"The Dangerous Years"*

Time: 27 minutes—16 mm.

Plot: Documentary portraying, through actual life situations, the current problems of the juvenile and youthful offender, and the role played by the law enforcement officer, judge, probation officer, and correctional worker in the apprehension, adjudication, and rehabilitation processes. The film is primarily for lay audiences.



# doofJC calendar

- Apr. 10-11: Workshop for Personnel Clerks, Washington, DC
- Apr. 10-12: Management Training for Executives, New York, NY
- Apr. 10-13: Crisis Intervention Seminar for Probation Officers, Nashville, TN
- Apr. 11-13: Management Training for Supervisors, Portland, OR
- Apr. 12-14: Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts, Denver, CO
- Apr. 13-14: Conference for Metropolitan Chief Judges, Denver, CO
- Apr. 14: Time Management Seminar, Portland, OR
- Apr. 17-19: Seminar for Assistant Federal Defenders, New Orleans, LA
- Apr. 17-19: Advanced Management Seminar for Probation Clerks, Minneapolis, MN
- Apr. 17-19: Advanced Seminar for Chief and Supervisory Pre-trial Services Officers, Washington, DC
- Apr. 23-26: Fifth Circuit Judicial Conference, New Orleans, LA**
- Apr. 24-26: Seminar for Bankruptcy Clerks, Kansas City, MO

- Apr. 24-26: Management Training for Supervisors, Houston, TX
- Apr. 25-27: Seminar for Chief Probation Office Clerks, Memphis, TN
- Apr. 27-29: Seminar for Bankruptcy Judges, Kansas City, MO
- May 1-2: Workshop for Personnel Clerks, Atlanta, GA
- May 9-10: Workshop for District Judges (CA-7), Delavan, WI
- May 9-10: Workshop for District Judges (CA-6), Nashville, TN

## PERSONNEL

### APPOINTMENT

A. David Mazzone, U.S. District Judge, D.Mass., March 3.

### ELEVATION

Aldon J. Anderson, Chief Judge, U.S. District Court, D.Utah, March 4.

James Skelly Wright, Chief Judge, CA-DC, March 28.

### NOMINATIONS

Gustave Diamond, U.S. District Judge, W.D.Pa., March 22

Daniel M. Friedman, Chief Judge, U.S. Court of Claims, March 22

Harold H. Greene, U.S. District Judge, Dist. of Col., March 22

Donald E. Ziegler, U.S. District Judge, W.D.Pa., March 22

### DEATH

Lawrence Gubow, U.S. District Judge, E.D. Mich., March 27

(FILMS, from page 7)

Title: *"The Thin Blue Line"*

Time: 26 minutes—16 mm.

Plot: Documentary which takes a look at the law enforcement officers who man "the thin blue line" between law and order and criminal chaos. The film is a study of the policeman today—his training, his objectives and his working conditions. You see the inner working of police departments across our country, you hear actual calls as they come in the Communications Center of the Chicago Police Department; you see the newest training methods of our police officers; you go on the 8:00 p.m. to 4:00 a.m. tour of duty with officer Tony Day in Rochester, New York, and you gain insight into problems facing the police today.

Title: *"It Takes A Lot Of Help"*

Time: 27 minutes—16 mm.

Plot: Documentary on community drug abuse action, narrated by Lorne Greene. The film is one of the first to actually document and explore the numerous avenues available to individuals and communities combating local drug abuse. The film involves you in an in-depth analysis of citizen initiated programs in Cedar Rapids, Iowa; group therapy sessions in Chicago; a dramatic conversation on Boston's narcotics "hot line"; an actual drug sensitivity trip in the forests near Tucson, and much more.

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## RULE-MAKING CRITIQUED AT METROPOLITAN CHIEF JUDGES MEETING

Procedural rule-making at the national and local level is in "very deep trouble" and demands serious study to identify the problems and to develop solutions. This was the consensus of speakers at a session on rule-making held during last month's Denver meeting of the Conference of Metropolitan Chief District Judges.

Among the difficulties besetting the current rule-making process, the speakers pointed to recurring Congressional intervention modifying rules submitted by the Supreme Court, a growing body of critical literature, legislative proposals for change in the process, and widespread dissatisfaction with local rules and pending orders that appear to threaten a national policy of basic procedural uniformity.

The program was scheduled at the Federal Judicial Center in response to a request by the planning committee of the Metropolitan Chief Judges. It was arranged by Judge Charles W. Joiner (E.D. Mich.), who presented an overview and

analysis of the subject with recommendations for change. Similar presentations were made by Raymond C. Caballero, Esquire, of El Paso, Texas and Professor Arthur R. Miller of Harvard. Judge Walter E.

(See RULES, page 2)

### VICE PRESIDENT, CHIEF JUDGE BROWN ADDRESS FIFTH CIRCUIT

Addressing the Fifth Circuit Judicial Conference on April 25th, Vice President Mondale commended the work of the judges in the Fifth, with particular emphasis on the efforts of the federal judiciary to dispose of heavy caseloads in spite of "a massive proliferation of statutory and administrative remedies" coming to their courts.

Special reference was made to the Fifth Circuit's efforts to "set a standard for the Nation in protecting human rights. In conflicts over voting rights and school desegregation, they fashioned working principles which have guided other jurisdictions...and they built a record of progress in defending civil liberties which stands in the finest and most heroic tradition of this Nation."

The Vice President commented on pending legislation which could create 150 additional judgeships in the system and he made it plain that he would do what he could to secure passage of legislation which would significantly assist the federal courts—through legislative impact statements, increased use of arbitration, and

(See ADDRESS, page 3)



Vice President Mondale addressing the Fifth Circuit Judicial Conference accompanied by Attorney General Griffin B. Bell, left, and Chief Judge John R. Brown, right.



(RULES, from page 1)

Hoffman (E.D. Va.), Chairman of the Conference, presided over the session, and he and Chief Judge William B. Bryant (Dist. Col.) served as commentators.

Judge Joiner, a former law professor and a member of the Judicial Conference Committee on Rules of Practice and Procedure, outlined four major problems on the national level: (1) "lack of respect and support by the Congress for the product of judicial rulemaking...." (2) lack of bar support for individual rules, and, at times, for the process [possibly because the process, "if it has not been secret has been a private one..."]; (3) the slowness with which national rules are produced and changed, which may reflect understaffing and the lack of any systematic process to monitor the operation of the rules; and (4) the failure of lawyers and judges to utilize the rules properly.

Judge Joiner was also critical of some local rules and the process by which they are developed, but he defended local rules as a means of "permitting some aspects of court administration and procedure to be locally run, to conform to local needs". He suggested that some of the proliferation in local rules may be caused by the failure of the national process to react swiftly to new conditions.

Mr. Caballero focused on the problems with local rules that he finds as a practicing trial lawyer. He acknowledged the need for local variations in court management, but he argued that nationally adopted policies are frustrated by local rules such as those forbidding a lawyer to discuss a case with jury members after verdict, or rules by which appellate courts render decisions without oral argument or written opinions.

The third speaker, Professor Arthur Miller, expanded on Judge Joiner's assessment of

national rule-making and noted that a process that worked effectively for the federal litigation of the 1930's might not necessarily be able to deal with today's much different and more complex litigation. He urged that the national and local rule-making processes be parts of a single organism—"a unified scheme of running the federal courts"—and dealt with on that basis. Perhaps the greatest obstacle to solving the widely-felt problems of local rules, Professor Miller said, is that we have very little comprehensive information about how many local rules there are and what they provide.

Speakers and conference members agreed that there was need to remedy the dearth of systematic knowledge about the body of local rules across the country. It was also suggested that the operation of national and local rules be monitored in order to provide rule-making bodies with more accurate and timely information to use in their deliberations. It was proposed that the Federal Judicial Center undertake these tasks.

There was little disagreement that the rule-making process could benefit from broader participation by the bar (and in some cases by the public); however, many judges expressed frustration in their efforts to gain greater bar input. Some judges reported success because they sought bar participation, from the outset, when comprehensive rules revisions were made.

## PROPOSAL: SENTENCING CITATIONS IN CIRCUIT OPINIONS

At the last meeting of the Chief Judges of the Circuit Courts of Appeals in Washington general approval was given to a suggestion that the sentences imposed in criminal cases be footnoted in appellate opinions.

The suggestion was originally made by Judge Bruce M. Van Sickle (D. ND) and presented at the meeting by Chief Judge Floyd R. Gibson (CA-8), Chairman of the Conference of Chief Judges.

It was noted that the judges of the Eighth Circuit, as well as judges in many other Circuits currently follow this practice.

The inclusion of such information in criminal appellate opinions is helpful both from a statistical standpoint and as a resource and guide to other judges in comparing sentences among similar offenses.

## HEALTH PROGRAM QUESTIONNAIRES BEING DISTRIBUTED

The Administrative Office has been notified by the Civil Service Commission that they are auditing each carrier in the Federal Employees Health Benefits Program to ensure that it is complying with its contract.

In order to do as complete an audit as possible, the Commission has begun sending questionnaires to subscribers just prior to their audit of a particular plan or area.

The information requested on the questionnaire is strictly voluntary. Replies will be anonymous since the questionnaires contain no subscriber information or identification and all information will be kept confidential.

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### Co-editors:

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.



ADDRESS, from page 1)

expansion of the magistrates' jurisdiction. Concurrently he noted "an overriding obligation to assist American citizens in protecting and enforcing their own rights." To accomplish this, he would: Liberalize the rules of standing and certification procedures for class actions, secure legislation which would permit federal suits against state and local custodial institutions, and bring about statutory provisions for civil remedies and liquidated damages against state or federal agencies which might violate constitutional liberties.

Chief Judge Brown opened the Conference with an address which called attention to a heavy backlog of civil cases at both the civil and district court levels. He reported that over the past four years the Circuit's civil caseload has increased by 534 percent and at the District Court level by 79 percent.

The filings per active judgeship were 237—the highest in the Nation during fiscal 1977.

Here are excerpts from Chief Judge Brown's address.

While additional judgeships will be helpful, they will not totally solve congestion in the federal courts. First, because we live in a litigious society and, second, because the large backlog of cases which has accumulated in the immediate past, must first be disposed of.

### The Court of Appeals

Creation of additional district judgeships with increased termination of cases is going to cause substantially more appeals in the appellate courts within a short period of time. Based on the current average, it is estimated that each new district judge will add 40 appeals per year to the docket of the Circuit Court.

This backlog has resulted in substantial delays, the second principal area of dissatisfaction.

Instead of the usual 30 to 60 day normal calendaring delay for preparation and issuance of court calendars, nonpreference civil cases are now taking between 16 and 18 months after all briefs have been filed before they can be orally argued ... [A] new complication has set in. This is the impact of priority preference on calendaring nonpreference cases for oral hearing.

For the past several years preference cases have constituted 47 percent of all cases determined by a judge to require oral argument. The preference cases comprise 41 different categories.

Ironically, the non-preference cases include such important litigation as civil rights, U.S. civil, tax, admiralty, and patent matters.

With a continuously increasing backlog, the impact of this is devastating. Out of a maximum number of 780 slots for cases, the number of slots for nonpreference cases is 323 for 1977, and these gradually decrease to an estimated 148 in 1983.

Of the 578 new nonpreference cases that we project will be filed in 1979... none will be heard in 1979, none in 1980, none in 1981, none in 1982, and only 148 or 25.5 percent in 1983, with the balance of 430 cases being heard between 1984 and 1987, for a delay of 6 to 9 years from the date of readiness to actual hearing. What this means is that most cases will take 4 to 5 years, and some may never be heard.

What all this means, of course, in human terms is that the real victims are not the judges, but the litigants.... From 1972 through 1977, this court terminated over 17,780 cases. This means that the judges of this court during this period were individually responsible for 1,185 terminations.

### The District Courts

What is the story of backlog in the district courts of this circuit? In the year 1973 there were 23,000 civil cases commenced in the district courts, but only 19,000 pending at the end of that year. Just four years later, however, the pending caseload in the district courts of the Fifth Circuit has skyrocketed from 19,000 in 1973 to 34,000 in 1977, a staggering 79 percent increase—and this despite a continued increase in output by the district courts year after year .... The simple fact is that the systems and procedures now being used by the district courts, coupled with the limited number of judges and supporting staff available, have resulted in all courts not being able to keep abreast of this burgeoning federal court caseload.

If you combine all of the civil cases pending over one year, the number has increased from 5,900 to 12,800, an increase of 117 percent.

The national average of terminations per active judge is 384 cases for 1977. In our 19 district courts, 15 of them exceeded the national average.

### New Developments

Major significant developments in the Fifth Circuit during the past year were:

- The Judicial Council of the Circuit has appointed a Lawyers Advisory Committee to the Rules and Internal Operating Procedures Committee of our court and they have contributed greatly to our continuing study of the Rules and Procedures in the Fifth Circuit. They also have assisted in proposing rules for admission to the federal courts.

- Our Council took a giant step forward in reducing the cost of litigation of appeals in the Fifth Circuit by adopting an amendment to our briefing rule which reduces the number of briefs from 20 copies to 7 and from 8 copies of an appendix to 4.

(See ADDRESS, page 4)



(ADDRESSES, from page 3)

- In April of this year the National Advisory Committee on Appellate Rules submitted to all of the courts proposals for amendments to the Federal Rules of Appellate Procedure. . . . Our Council has already adopted one of the proposals—to limit all briefs to 50 pages and all reply briefs to 25 pages.

- The Advisory Committee has also proposed an amendment to the oral argument Rule 34 in the Federal Rules of Appellate Procedure. This Rule now sanctions the Fifth Circuit procedures regulating and sometimes denying oral argument; built into the Rule is the safeguard of requiring a unanimous decision by the three judges on the panel that oral argument is not needed.

[The addresses of The Vice President and Chief Judge Brown are available from the FJC Information Service Office.]

#### HOUSE DELAYS ACTION ON FINANCIAL DISCLOSURE BILL

The House of Representatives has delayed final action on H.R. 1, the bill which codifies the financial disclosure requirements for Congressmen contained in the rules of the House of Representatives and extends annual disclosure requirements to candidates for federal office, some employees of the Executive Branch, employees of the Judicial Branch compensated at the equivalent of GS-16 or above and all federal judges.

The reports would be under the supervision of the Judicial Conference of the United States.

On June 27, 1977, the Senate by a vote of 74 to 5 passed S. 755, a bill which requires public financial disclosure by officials and high-ranking employees of the Legislative, Executive and Judicial Branches.

The House had scheduled action on H.R. 1 for April 12, but final consideration has been indefinitely postponed.

#### U.S. SUPREME COURT RULES ON JOINT REPRESENTATION OF CRIMINAL DEFENDANTS\*

In an opinion handed down April 3, 1978, a divided Supreme Court required separate representation for multiple defendants in state criminal prosecutions absent a specific finding that a risk of conflict of interest was too remote to require separate counsel. The case is *Holloway, et al. v. Arkansas*.

Three men were each charged with one count of robbery of a Little Rock restaurant and two counts of rape of two employees at the restaurant. Their court-appointed public defender moved before trial, and again before the jury was empanelled, for appointment of separate counsel, claiming a conflict of interest, alleging that since each defendant insisted on testifying on his own behalf, cross-examination of each client to protect the others was impossible without revealing privileged information provided by the defendants. The trial judge denied the motions (but conducted a hearing, evidently unrecorded, on the first one). The jury convicted the defendants on all counts after each claimed in unguided testimony that he had been elsewhere. The Arkansas Supreme Court affirmed, rejecting petitioners' claims that their single representation deprived them of effective assistance of counsel. The state court held the potential for conflict had not been shown before trial, nor actual conflict shown during trial.

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\*From time to time, *The Third Branch* will invite its readers' attention to Supreme Court decisions that have significant import but that may not have been widely noticed.

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The U.S. Supreme Court held 6-3, in an opinion by the Chief Justice, that although there is no *per se* constitutional right to separate representation, the trial judge deprived defendants of effective assistance of counsel by his failure either to appoint separate counsel when requested in good faith as here or to take steps to ascertain if the risk of conflict was too remote to justify it.

Having found it error to refuse separate representation, the Court refused to apply the harmless error doctrine. The Court cited precedent to the effect that "whenever a trial court improperly requires joint representation over timely objection reversal is automatic." In this case, it would require "unguided speculation" to determine whether the error was harmless, since one would have to assess what the conflict led the attorney to *refrain* from doing as to his "options, tactics and decisions in plea negotiations," as well as in the sentencing process.

Mr. Justice Powell's dissenting opinion, in which Justices Blackmun and Rehnquist joined, did not deny that the "trial court should have held an appropriate hearing" on the possibility of potential conflict. But, he argued, the judge's "failure to inquire" was not a constitutional violation meriting reversal given "the particular circumstances of the case," where it was "unlikely that separate counsel would have been able to develop an independent defense . . . because of the degree of overlap in the identification testimony of the State's witnesses and because of the consistency of the alibis advanced by the petitioners." So finding, Justice Powell worried that "the Court opinion contains seeds of a *per se* rule of separate representation merely upon the demand of defense counsel," which could lead to dilatory defense counsel tactics.



## PRESIDENT CREATES 22-MEMBER ANTITRUST COMMISSION

President Carter, in an Executive Order signed several months ago, created a 5 member Antitrust Commission For the Review of Antitrust Laws and Procedures. Last month, in a second Executive Order, the President expanded the Commission to 22 members. However, the names of all commission members have not yet been announced.

The President specified that the Commission will consist of the Assistant Attorney General in charge of the Justice Department Antitrust Division, the Chairman of the Federal Trade Commission, the chairman of one other appropriate regulatory agency, five Senators, five Representatives, one federal district judge, the state attorney general and seven private citizens.

The Chairman shall be designated by the President from among the members of the Commission and the Commission will have six months from the date the last member is appointed to finish work and thirty days afterward to submit a final report to the President and the Attorney General.

The President charged the Commission with the task of studying and making recommendations on the following subjects:

- Revision of the procedural and substantive rules of law needed to expedite the resolution of complex antitrust cases and development of proposals for making available remedies more effective.

- Among these proposals are the creation of a roster of district court judges knowledgeable regarding antitrust law and large case problems to whom such cases may be assigned; revision of pleading requirements in order to narrow as quickly as possible the scope of contested issues of fact and law;

- revision of discovery practices in order to limit expensive and time-consuming inquiry into areas not germane to contested issues; the desirability of a grant of judicial authority to restrict and penalize dilatory practices through control of issue formulation and imposition of sanctions for unnecessary delays or failures to cooperate; amendment of evidentiary practices to expedite introduction of testimony and exhibits at trial; simplification of the standards required to establish attempted monopolization in suits brought by the U.S. under the Sherman Act; and, consideration of structural relief for antitrust violations and of nonjudicial alternatives for resolution of complex antitrust issues.

- The desirability of retaining the various exemptions and immunities from the antitrust laws, including exemptions for regulated industries and exemptions created by state laws that inhibit competition.

### JUROR ORIENTATION FILM AVAILABLE

The FJC Division of Continuing Education and Training has available on a one-week loan basis a recent juror orientation film entitled "And Justice for All: The Jury".

The film is in color, 16 mm, and 25 minutes in length. It was developed for the purpose of saving time for judges and court officials who are concerned with juror orientation. It effectively illustrates and explains the duties, procedures, and responsibilities of jury service in simple, direct and understandable terms.

To order the film, call 8-633-6024.

## HEARINGS HELD ON ARBITRATION BILL

The Senate Judiciary Subcommittee on Improvements in Judicial Machinery held hearings last month on S. 2253, the bill that would provide for mandatory non-binding arbitration of some disputes in pilot district courts selected by The Chief Justice.

The Senate bill was introduced October 28, 1977 by Senator James O. Eastland and the House counterpart, H.R. 9778, on October 27, 1977 by Congressman Peter W. Rodino, Jr.

Under the provisions of the bill, five to eight pilot district courts would be selected but other federal district courts would be allowed to use mandatory non-binding arbitration through the adoption of local rule. The amount in controversy must be less than \$50,000 and the court-selected arbitrators would be paid \$50 per case.

In addition, if a party demands a trial de novo after arbitration and does not receive a judgment more favorable than the arbitration decision, he would be required to pay the costs of the arbitration proceeding and the interest that the arbitration award would have earned during the period of the federal court trial.

The bill provides for a three-year arbitration experiment that would be evaluated by the Federal Judicial Center.

In testimony on the measure before the Subcommittee last month, Attorney General Griffin B. Bell strongly endorsed the proposed court-annexed arbitration since it is designed to both speed up the resolution of cases that are now settled and also resolve more quickly and less expensively many of the cases that now go to trial.

The Attorney General pointed to successful state arbitration programs in Pennsylvania, New

(See HEARINGS, page 6)



(HEARINGS, from page 5)

York, Ohio, Michigan, Arizona and California and said that from 85 to 95 percent of cases referred to arbitration are not appealed. "The success that the state systems have had clearly indicates that this experiment is one worth trying in the federal courts."

Under the bill, cases could be referred to arbitration if they involved claims for money damages only, the claim does not exceed \$50,000 and the cases present predominantly factual issues, rather than complex legal questions, constitutional claims, or novel issues of law that may establish important precedents.

While the Attorney General could not predict precisely how many cases would be referred to arbitration under the legislation, he did indicate that the impact on the federal caseload could possibly be significant.

Robert Coulson, President of the American Arbitration Association, told the Subcommittee that the fee for the arbitrator, \$50 per case, may not be sufficient to attract qualified attorneys and that the application of the penalty formula is unclear.

He pointed out that three federal district courts—Connecticut, Eastern Pennsylvania and Northern California—are now carrying out pilot experiments in arbitration without the need for legislation and questioned whether the bill was thus necessary.

Mr. Coulson said the bill called for compulsory, nonbinding arbitration to induce settlements in certain categories of cases in certain district court systems. "I recommend that the bill be recast to eliminate the confusion between this technique and voluntary, binding arbitration."

Craig Spangenberg, Chairman of the Congressional Liaison Committee of the

## PRISONS DIRECTOR SAYS INMATE POPULATION "STABILIZED", TERMS INCREASING

The Director of the Bureau of Prisons, Norman A. Carlson, in testimony last month before the Senate Appropriations Committee said the total inmate population which is now over 29,700 hit an all-time high in August, 1977 of 30,491 but is now stabilizing.

"Whether or not this is a temporary phenomenon is difficult to predict," he said. "Of the several population prediction models monitored by the Bureau, they project, on the average, a population of 33,200 by 1987.

"Based on our analysis of recent trends, we believe that the inmate population will remain high for the next several years. The average sentence of the confined population continues to increase and now stands at nearly 102 months, an increase of 38% or 28 months since 1967. The more severe offenses for which the courts traditionally impose long sentences, constitute a much larger percentage of the

population than in the past.

"In addition, the average length of sentence for these offenses has increased sharply. For example, over 29 percent of the offenders confined are sentenced for crimes of violence.... Ten years ago, the comparable figure was 18 percent. In just two years, the average sentence for offenders confined for robbery has increased by nearly 30 months from 139.7 to 169.3. It is clear that the Bureau is receiving more violence-prone offenders in the population for which the period of incarceration is significantly increasing."

The Director pointed out that the inclination of the federal courts to divert so-called "good risk" offenders has changed the prison population so that today there is a greater percentage of "higher risk" offenders in prison than there were a year ago. Since 1975, "the number of inmate assaults on inmates and staff has increased by more than 22 percent."

Association of Trial Lawyers of America, questioned both the adequacy of the payment for the arbitrator and the penalty provision. "It is unreasonable and unfair to penalize a party if the jury verdict is not more favorable than the arbitrator's award."

Mr. Spangenberg pointed out that during the last decade tort case filings in the federal court system have decreased by eight percent while there has been a tremendous increase in civil rights, social security, labor, antitrust, and contract cases and in prisoner petitions. "The proposed federal arbitration plan does not reach the real cause of docket congestion."

Lewis J. Gordon, Chairman of the Compulsory Arbitration Committee of the Philadelphia Bar Association, described for the Subcommittee the Pennsylvania experience with compulsory arbitration, which has been used extensively in that state for over 25 years.

Mr. Gordon said that arbitration is one of the most successful methods of disposing of civil actions and that it continues to be the chief means by which civil cases are disposed. In addition, only about 14 percent of appeals from arbitration required a full court trial.

"Without arbitration, our courts would be hopelessly bogged down," he said.



## SENATE PASSES FOREIGN INTELLIGENCE ACT

On April 20, the Senate passed S. 1566, the Foreign Intelligence Surveillance Act of 1978, by a vote of 95 to 1.

The Act provides for a special court consisting of seven federal district court judges to be designated by The Chief Justice on a staggered basis and a special court of review consisting of a three-judge panel of judges from either the federal courts of appeals or the federal district courts.

The House counterpart, H.R. 308, is currently pending in the House Select Committee on Intelligence. It provides for a special court consisting of at least one judge from each of the judicial circuits who shall be designated by The Chief Justice, and a special Court of Appeals consisting of six judges who shall be designated from among judges nominated by the chief judges of the district courts of the District of Columbia, the Eastern District of Virginia, the District of Maryland and the United States Court of Appeals for the District of Columbia.



## JURY INSTRUCTIONS ON DISCRIMINATION CASES AVAILABLE

A set of 16 jury instructions for use in §1981 employment cases has been drafted by Judge Earl E. O'Connor (D. KS). While the primary focus of the instructions is racial discrimination, a number of the instructions are generally applicable to all civil cases including burden of proof, significance of assignments of counsel and relief.

Copies of the instructions may be obtained from the Federal Judicial Center's Information Service Office.



An advanced Seminar for Chief and Supervising Pretrial Services Officers was held April 17-19, 1978, in Washington, D.C. Pictured (left to right) are: John Hornberger, Glen Vaughan, Joseph Gibbons, Guy Willetts and James McMullin.

## A. O. RELEASES 1977 WIRETAP REPORT

The tenth report submitted under the Wiretapping and Electronic Surveillance provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 was delivered to Congress on April 26, 1978. Of the twenty-four jurisdictions which have laws authorizing courts to issue orders permitting wiretapping and electronic surveillance, nineteen reported use of wiretap statutes in 1977.

During calendar year 1977, 626 applications for orders to intercept wire or oral communications were made and all were granted. This is a nine percent decrease from the 686 authorized in 1976. Seventy-seven or 12 percent of the applications were granted by federal judges, while 549 were granted by state judges. Intercepts authorized and approved in the states of Florida, Maryland, New Jersey, and New York represented 71 percent of all wiretap authorizations during 1977.

The offenses specified in the applications for court orders covered a wide range. There were 265 authorizations, comprising 42 percent of the total, where gambling was the most serious offense. In 237

authorizations, drug offenses were under investigation.

A total of 2,191 persons were arrested as of December 31, 1977, as a result of intercepts terminated during calendar year 1977, with 372, or 17% of these arrests resulting in convictions. The total number of arrests for all wiretaps installed during calendar years 1969 through 1977 is 25,605. Of this total 12,494, or 49% have resulted in convictions.

A copy of the report may be obtained by writing to the Director of the Administrative Office of the United States Courts, Washington, D.C. 20544.

### Notice to Our Readers

*The Third Branch* is updating its mailing list.

Non-federal subscribers who received a post card within the past month requesting address verification should be certain to return the card at an early date; otherwise the reader will be discontinued from future mailings of *The Third Branch*.



# DOJ calendar

May 8-11 Seventh Circuit Conference, Delevan, WI  
May 9-10 Workshop for District Judges (Seventh Circuit), Delevan, WI  
May 9-10 Workshop for District Judges (Sixth Circuit), Nashville, TN  
May 10-12 Sixth Circuit Conference, Nashville, TN  
May 15-16 Judicial Conference Subcommittee on Judicial Statistics, Washington, DC  
May 16-19 Employment Placement Seminar for Probation Officers, Chicago, IL  
May 17-20 Ninth Circuit Conference, Scottsdale, AZ  
May 21-23 DC Circuit Conference, Williamsburg, VA  
May 22-24 First Circuit Conference, Hyannis, MA  
May 22-24 Workshop for Docket Clerks, Dallas, TX  
May 22-24 Management Training for Supervisors, Orlando, FL  
May 22-26 Seminar for Probation Officers With Indian Caseloads, Salt Lake City, UT  
May 25 Time Management Seminar, Tampa, FL  
May 26 Time Management Seminar, Jacksonville, FL  
June 5-7 Management Training for Executives, Chicago, IL  
June 5-9 Orientation Seminar for U.S. Probation Officers, Washington, DC

# PERSONNEL

## NOMINATIONS

Cristobal C. Duenas, U.S. District Judge, Guam, April 7  
Len J. Paletta, U.S. District Judge, W.D. PA, April 7  
Leonard B. Sand, U.S. District Judge, S.D. NY, April 7  
Alfred Laureta, U.S. District Judge, Northern Mariana Islands, April 10  
Adrian G. Duplaniter, U.S. District Judge, E.D. LA, April 24

## CONFIRMATIONS

Almeric L. Christian, U.S. District Judge, VI, April 6  
Paul A. Simmons, U.S. District Judge, W.D. PA, April 6  
Robert W. Sweet, U.S. District Judge, S.D. NY, April 25  
Gustave Diamond, U.S. District Judge, W.D., PA, May 1  
Donald E. Ziegler, U.S. District Judge, W.D., PA, May 1

## DEATHS

Robert P. Anderson, U.S. Court of Appeals, CA-2, May 2  
John C. Bowen, U.S. District Senior Judge, W.D. WA, April 27  
Frederick van Pelt Bryan, U.S. District Judge, S.D. NY, April 17  
Elisha Avery Crary, U.S. District Judge, C.D., CA, April 28

## ELEVATION

James L. Foreman, Chief Judge, U.S. District Court, E.D., ILL, March 31

## RESIGNATION

Herbert A. Fogel, U.S. District Judge, E.D., PA, May 1



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## Bulletin of the Federal Courts

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### FIVE CIRCUITS HOLD ANNUAL JUDICIAL CONFERENCE

The Spring season has brought the usual rash of circuit judicial conferences, with five of the circuits meeting during May. The Sixth Circuit heard a report by Chief Judge Harry Phillips, who opened the meeting with remarks that have commonality with all the circuits: "There is docket congestion from Marquette to Memphis." The causes: the litigation explosion, recurring expansion of federal jurisdiction through acts of Congress, and the need for more judges.

The Seventh Circuit heard from their Circuit Justice, Mr. Justice Stevens, from Chief Judge Thomas E. Fairchild, and turned to a panel discussion on problems and techniques in the preparation for and the trial of trust cases—a discussion which was repeated in the Sixth Circuit. Also on their program was a panel discussion on Title cases.

The District of Columbia Circuit, which met at Williamsburg, Virginia, devoted much of their time to class sessions, developments in environmental law and procedures, and the use of magistrates. There were closing remarks by The Chief Justice, their Circuit Justice, and their own Chief Judge, J. Skelly Wright.

(See CIRCUITS, P. 2)



Attending the Sixth Circuit Judicial Conference (left to right) Chief Justice Joe W. Henry, (Sup. Ct. Tenn.); Mr. Justice Stewart (Circuit Justice); Attorney General Griffin B. Bell; and Solicitor General Wade H. McCree, Jr.

### COMMITTEE ON JUDICIAL EXPERIMENTATION APPOINTED

The Federal Judicial Center has announced the formation of an Advisory Committee charged with defining the appropriate scope of experimentation in the development of improved methods for the administration of justice.

Committee Chairman Edward D. Re, Chief Judge of the U.S. Customs Court, and twelve other scholars, judges, and lawyers, will investigate the methods of evaluation appropriate to a careful and knowledgeable development of

(See COMMITTEE, P. 2)

### Status Report

#### FEDERAL CRIMINAL CODE IN MARK-UP

Complex proposals for major federal criminal code revision are in the mark-up stage before a House Subcommittee on Criminal Justice chaired by Congressman James Mann (D., S.C.). The subcommittee has several bills before it but is focusing on S.1437, which passed the Senate on January 30th with Justice Department support. The subcommittee has indicated basic disagreement with several aspects of S.1437, including creation of a

(See CODE, P. 2)



(CIRCUITS, from P. 1)

The Ninth met at Scottsdale, Arizona this year and they devoted time to consideration of the Nunn and DiConcini Bills which would establish procedures for the involuntary retirement, removal and censure of federal judges. Also on their program was a report from the lawyer representatives who attended the conference and which included, among other subjects, the proposed new criminal code, the pretrial diversion program, the federal public defender program and judicial polls.

Chief Judge Frank M. Coffin set Hyannis, Massachusetts as the site for the First Circuit's annual judicial conference, and two subjects on their agenda were the use of magistrates and the adequacy of representation in the federal courts. They heard speeches by both Solicitor General Wade McCree and Chief Justice Vincent McKusick of the Supreme Court of Maine.

[Papers distributed at these conferences are available at the Information Service Office.]

(CODE, from P. 1)

sentencing commission to issue sentencing guidelines to judges.

Current expectations are that a bill may go to the full House Committee by early July, and to the House floor before the August recess, with reference to conference committee and reconsideration by both houses after the recess.

Subcommittee members' statements indicate near unanimous opposition to S.1437's sentencing commission provisions. The subcommittee appears to favor advisory, rather than mandatory, sentencing guidelines and prefers that the issuance of such guidelines be the responsibility of the Judicial Conference. This position

appears consistent with Judicial Conference testimony before the subcommittee urging that control of any sentencing commission be vested in the Conference.

The subcommittee's approach stands in marked contrast to S.1437, which would create a sentencing commission as an independent judicial branch agency with seven, full-time, presidentially appointed commissioners, three of whom would be selected from a seven-judge list provided by the Judicial Conference. S.1437 would have the commission prescribe guidelines indicating ranges of appropriate sentences for specified offenses and allow defendants or the Government to appeal sentences above or below the specified range.

There are other elements to the recodification. The subcommittee seems most interested in improving existing federal criminal laws by regrouping current sections of Title 18 into a more rational organization, and by eliminating offenses and procedures found to be unnecessary and outdated. On the other hand, the subcommittee appears skeptical about S.1437's provisions for major expansion of federal jurisdiction and for changes in the burden of proof concept, fearing that these two changes may increase dramatically the criminal offenses subject to federal prosecution as well as strengthen the hand of the prosecutors. The subcommittee is further concerned about the large numbers of technical and conforming amendments that would be required in other titles of the U.S. Code to accommodate the basic changes of the revision, fearing that hidden problems lurk in these seemingly innocuous changes.

The subcommittee has yet to focus on several high-visibility issues that have previously loomed large in public comment on the bill, such as the scope of

journalists' testimonial privilege.

*The Third Branch* (August 1977) summarized S.1437's major provisions as it was reported out of the Senate subcommittee last summer. There were, of course, extensive changes made in full Committee mark-up and during Senate floor debate. The bill passed by the Senate in January reflected compromises on a number of issues that had made similar legislation in the last Congress (S.1) acceptable neither to prosecution nor defense oriented legislators.

(COMMITTEE, from P. 1)

innovations in the courts, and the justice system in general.

The committee will focus on the use of controlled experimentation to evaluate innovations in the justice system. One potential application of this method would be the evaluation of local rules providing for mandatory, non-binding arbitration of civil cases (see "Hearings Held on Arbitration Bill", *The Third Branch*, Vol. 1, No. 5, May, 1978, at p. 6). Such an experiment would require the random assignment of eligible cases to two groups. Cases in the "experimental group" would be subjected to the arbitration procedure, while those in the "control group" would proceed through conventional litigation procedures. The random assignment would assure that the two groups of cases do not differ in any systematic way, and that any differences in such things as average time from filing to disposition can be clearly attributed to the differences in procedures.

Although controlled experimentation is generally the most reliable method of policy evaluation, its use in the justice



system poses unique legal and policy questions, which have yet to be explored and resolved. The committee's task is to assess these questions against the backdrop of the urgent need for effective new methods of dispute resolution and judicial administration. The ultimate goal is to provide guidance on the proper and necessary scope of experimental evaluation of innovations in the delivery of justice.

The Center will provide supporting services to the committee. The committee may recommend to the Center Board at prior to its final report, proposed recommendations of the committee will be aired before a conference of judges, lawyers, litigants and researchers—those for whom the report will have the most direct impact. The committee is formally known as the Federal Judicial Center Advisory Committee on Experimentation in the Law. Its members are Judge Rehnquist, Chairman; Alvin Bronstein, Executive Director of the F.C.L.U.'s National Prisons Project; Professor Alexander Capron, of the University of Pennsylvania Law School; Judge Wilfred Feinberg, of the Second Circuit; Jane Kates Frank, Deputy Secretary of the Cabinet; Professor Paul Freund of Harvard University; Professor Gerald Gunther, of Stanford Law School; Professor Asdair MacIntyre, of Boston University; Dean Norman Malachuk, of N.Y.U. Law School; Jerome Shestack, of the Philadelphia Bar; Judge Joseph Sneed, of the Ninth Circuit; Professor Abraham D. Sofaer, of Columbia University School of Law; and Dr. June Tapp, Provost of Revelle College, University of California at San Diego. John Papard, of the Research Division at the Federal Judicial Center, will serve as secretary and reporter to the committee.

### JUDICIAL FELLOWS CHOSEN FOR 1978-79

The Judicial Fellows Commission has selected William James Daniels, an Associate Professor of Political Science at Union College in Schenectady, New York, a member of the Editorial Board of the *American Political Science Review*, and James A. Robbins, a Senior Management Specialist with the Administrative Office of the Chief Justice of Massachusetts, to serve during the 1978-79 fellowship year.



WILLIAM JAMES DANIELS

Mr. Daniels has a Ph.D. from the University of Iowa in Public Law and Judicial Behavior and was selected for a Fulbright-Hays Lecturing Fellowship. This allowed him to lecture at Japan's Waseda University during 1973. He wrote his Ph.D. dissertation on "Public Perceptions of the United States Supreme Court."

Mr. Robbins is a graduate of Iowa Law School and also holds a B.A. from the University of Iowa in Political Science and Psychology. In addition, he has attended the Institute for Court Management and sessions at the National Judicial College.

Currently, Mr. Robbins has the responsibility of analyzing and solving management problems in the Massachusetts District Courts. Among the management projects he has participated in are performance evaluations, recommendations for management improvements



JAMES A. ROBBINS

and the implementation of programs to improve judicial administration.

### DISSENTS TO SENTENCING PROPOSAL IN CIRCUIT OPINIONS

Last month's issue of *The Third Branch* contained an article about the suggestion that information on sentences imposed be footnoted in appellate opinions. The subject was discussed when the circuit chief judges held their Spring meeting in March. Those in favor of the proposal felt it could provide assistance to district judges and could also be of value for statistical purposes.

But, there was disagreement. It was pointed out that with so many criminal appeals affirmed by judgment orders, two-thirds in at least one circuit, the data could have no statistical value. It was also urged that a judge, unfamiliar with the case, and reading the opinion, would gain no helpful information about the defendant and therefore would gain no direct insight to the reasons for the sentence.

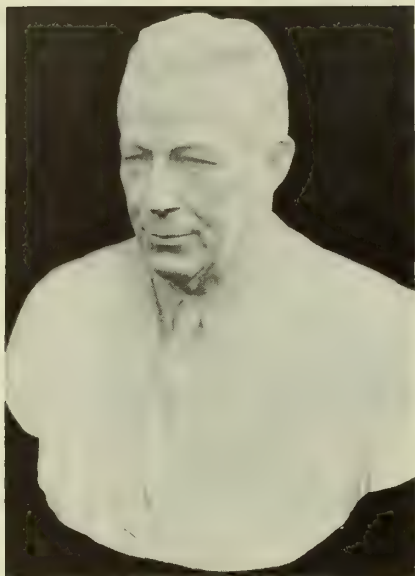
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#### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts





### EARL WARREN MEMORIAL

A portrait-bust commemorating Chief Justice Earl Warren was unveiled on May 15, in ceremonies at the Supreme Court.

The bust is the work of Walker Hancock, of Gloucester, Massachusetts, creator of many other busts and statues in Washington and elsewhere in this country and in Europe.

The bust will join the collection of the thirteen other former Chief Justices of the United States in the Great Hall leading to the Courtroom on the first floor.

The bust is of Bianco P marble from a quarry in the Carrara

mountain range in Italy. The marble is of a smooth white type without grains and thus best suited to carving. It is of a type favored by Michelangelo and other Renaissance artists who rejected marbles used by earlier generations of sculptors in its favor.

Mr. Hancock says that the bust of Earl Warren presented difficulties for him because the photographs from which he worked showed the former Chief Justice with animated expressions and with much of his face hidden by horn rimmed spectacles. On completion of the bust Mr. Hancock had similar glasses made, testing them on the bust to be sure that they recreated the same image seen in the photographs.

A plaster bust was made at the outset at the sculptor's studio in Gloucester. This was sent to the Supreme Court for the family's inspection and approval. Next the plaster bust went to Pietrasanta where the Palla firm assigned carvers to create the image. Finally Mr. Hancock went to Pietrasanta for his own final week of work on the details of the face. The marble bust was returned to the Supreme Court where Mrs. Warren examined it and Mr. Hancock added the final touches.

### CHIEF JUSTICE ADDRESSES ALI

In a speech delivered before the American Law Institute on May 16, Chief Justice Warren Burger challenged the legal profession to help law schools improve advocacy training. Speaking at the Mayflower Hotel at the Institute's Annual Meeting, The Chief Justice cited courtroom performance as the profession's greatest weakness.

The Chief Justice urged that three law schools conduct an experiment in which law school fundamentals would be covered in two years and in which the third year would be reserved for instilling advocacy skills:

- The third or final year of the legal education would not be the traditional eight or nine months but a full twelve month period, roughly comparable to medical internship, devoted to involvement in every phase of the litigation process from the first interviews with the client to interviews with witnesses, preparation of statements of witnesses, and preparation of trial briefs. This should be followed by firsthand observation of the trials of cases they have worked on.

- A large part of the third year should also be devoted to continued observation of trials of cases carefully selected in cooperation with the law schools, the bench and bar. To the extent possible, observation of trials should be followed by "postmortem" analysis of the case with the two trial advocates in seminars for students and the law teachers who are skilled in organizing learning processes.

The Chief Justice called upon the organized bar to provide support and leadership for the experiment "so that people's rights can be vindicated fairly and justly and at a cost which reflects efficiency as well as competent professional performance."



Appearing at the unveiling ceremonies of the marble bust of Chief Justice Earl Warren are (left to right): Mrs. Walker Hancock; the artist, Walker Hancock; Mrs. Earl Warren; Chief Justice Burger; and Mrs. Burger.



## ATTORNEY GENERAL NAMES ANTITRUST COMMISSION MEMBERS

Attorney General Griffin B. Bell has named the members of the 22-member Antitrust Commission which will study the nation's antitrust laws and make recommendations for changes they believe are necessary.

The Attorney General on May 9, 1978, named Maxwell Lecher, a Los Angeles attorney; Eleanor M. Fox, a law professor at New York University; John Izzard, a partner in the Attorney General's former law firm in Atlanta; James Nicholson, a Washington, D.C. attorney; Craig Langenberg, a Cleveland attorney; Gordon Spivack, a New York attorney and visiting University Lecturer, and Lawrence Sullivan, Professor of Law at the University of California in Berkeley.

Also named were Chauncey Downing, West Virginia Attorney General, and Chief Judge C. Clyde Atkins (S.D. Fla.). Members of Congress named by Senator Edward Kennedy and Representative Peter Rodino also were appointed to the Commission. Presenting the Executive Branch on the Commission will be Assistant Attorney General in charge of the Antitrust Division, John Shenefield; FTC Chairman Michael Pertschuk and CAB Chairman Alfred Kahn. The Chairman of the Commission will be Assistant Attorney General Shenefield. The Commission plans to hold public hearings beginning this month in Washington and to complete its work within six months.

## EDUCATION AND TRAINING MATERIALS POPULAR

Since March of 1976, over 1700 training cassettes have been loaned out to federal district judges, over 1200 have gone out to probation officers and over 1100 have gone out to Bankruptcy judges.

On a monthly basis over 274 audio cassettes are sent out to some twenty different categories of court personnel.

The number of separate topics on cassettes listed in the Education Media Catalog is now over 1000. An addendum will be published shortly listing those tapes which have been added to the library since the last edition of the Educational Media Catalog. A new Media Catalog will be published sometime towards the end of the summer and will have an updated listing of audio cassettes, films, and video cassettes. Many commercial tapes have been added to the catalog as well. Presently, the Center is sending out about 50 videotapes a month.

Demand for the "Equal Justice Under Law" films has been running very high. Of the 82 films which were sent out in April, over 30 percent of them were one of the five films comprising the "Equal Justice Under Law" series. The films are based on major constitutional decisions of the Supreme Court during the era of Chief Justice John Marshall. There are five films in the "Equal Justice Under Law" series, with each film running about thirty minutes. All of the films are in color and may be loaned either as a five-film package or ordered separately by calling Sherry Ledford or Tom Scott; 202-633-6024.

New to the Media Catalog format are video cassettes. Tapes are available for loan on 45 different topics. All video cassettes are of the 3/4" U-Matic format and can be played on most video equipment.

## THIRTY SENATORS NOW USE NOMINATING COMMISSIONS FOR JUDICIAL RECOMMENDATIONS

Thirty senators in eighteen states are now using a nominating commission for district judge recommendations. (A list of the states and senators using these commissions appears on page six.)

Attorney General Griffin Bell February 9 issued a statement on the selection of federal judges and U.S. Attorneys in which he said, "To date, of twenty-one federal district judges appointed by President Carter and confirmed by the Senate, eleven came from nominating commissions. Of twelve additional federal district judgeship candidates either already nominated and awaiting confirmation, or presently being processed for nomination, nine have come from nominating commissions.

"Of the 145 proposed new circuit and district court judgeships to be created by the Omnibus Judgeship Bill now pending in Congress, at least sixty percent will be filled with the assistance of nominating panels. We anticipate that additional panels will be created by Senators as district judgeship vacancies in their states now occur for the first time under this Administration.

"In addition, Senators from approximately eight states have established a commission for the selection of candidates for U.S. Attorney."

### NOTICE TO OUR READERS

*The Third Branch* is updating its mailing list.

Non-federal subscribers who received a post card within the past month requesting address verification should be certain to return the card at an early date; otherwise the reader will be discontinued from future mailings of *The Third Branch*.





### SENATORS USING A NOMINATING COMMISSION FOR DISTRICT JUDGE RECOMMENDATIONS

California	Senators Cranston & Hayakawa
Colorado	Senators Hart & Haskell
Florida	Senators Chiles & Stone
Georgia	Senators Nunn & Talmadge
Indiana	Senator Bayh
Iowa	Senators Clark & Culver
Kentucky	Senators Ford & Huddleston
Massachusetts	Senator Kennedy
Michigan	Senator Riegle
New Hampshire	Senator McIntyre
New York	Senators Moynihan & Javits
New Mexico	Senators Domenici & Schmitt
Ohio	Senators Glenn & Metzenbaum
Oklahoma	Senators Bartlett & Bellmon
Pennsylvania	Senators Heinz & Schweiker
Tennessee	Senator Sasser
Utah	Senators Garn & Hatch
Virginia	Senator Byrd

### PRESIDENT ISSUES NEW EXECUTIVE ORDER FOR CIRCUIT JUDGE COMMISSION

President Carter issued on May 11 a new Executive Order, number 12059, creating the United States Circuit Judge Nominating Commission.

The Executive Order establishes separate panels for each of the Judicial Circuits and two panels for both the Fifth and the Ninth Circuits.

In general, the function of these panels will be to "recommend for nomination as circuit judges persons whose character, experience, ability and commitment to equal justice under law, fully qualify them to serve in the Federal judiciary."

The Panel for the District of Columbia Circuit will have the dual responsibility of recommending candidates for both the Circuit and the District Court.

(The full text of the Executive Order can be found beginning on page 20949 of the May 16 Federal Register.)

### BANKRUPTCY STATISTICS RELEASED

The Administrative Office of U.S. Courts' Bankruptcy Division has just released its bankruptcy statistics for the statistical year ending June 30, 1976 which reveal that almost a quarter of a million persons or businesses availed themselves of the relief offered by the Bankruptcy Act during the period.

The total number of cases filed was 246,549, the second largest number ever filed under the Act, but a decrease of 7,935 cases or 3.1 percent less than the number filed in the peak year, 1975.

There was some drop in filings in all circuits except the District of Columbia Circuit, and those comprised of districts in highly industrialized northeast regions—the First, Second and Third Circuits.

Paralleling the rise in filings in those regions was a continued rise in business bankruptcies to an all time high of 34,156. The sharpest increase in total filings occurred in the Third Circuit where filings rose from 7,484 in 1975 to 10,090 in 1976, an increase of 34.8%.

The Second Circuit followed with an increase in filings from 14,623 in 1975 to 17,093 in 1976, an increase of 2,470.

This table shows the number

of business and non-business bankruptcies in the last decade.

The number of business bankruptcies continued to rise in 1976 to reach the all-time high of 35,201. This represents an increase of 5,071 cases or 16.8 percent over 1975, the previous peak year. Significantly, in the past seven years the percent of business cases of total cases filed has continued to increase, reaching 14 percent of the total in 1976.

The small drop in total filings occurred in the non-business bankruptcies. In 1976, they dropped from the all-time high of 224,354 cases filed in 1975 to 211,348—a decrease of 5.8 percent.

The Third Circuit, as in the previous year, experienced the greatest percentage of business bankruptcies in the nation—24.3 percent. With two exceptions, there was a decrease in all types of bankruptcy cases filed in statistical 1976.

Those exceptions were Chapter 9, under which two cases were filed compared with none in 1975, and Chapter Twelve under which 525 cases were filed compared to 280 in 1975. While filings in Chapter Twelve cases increased in 1976, the dismissal and adjudication rate in Chapter Twelve cases was also high in 1976. Of the 218 Chapter Twelve cases concluded, 205 or 94 percent were either dismissed or adjudicated.

While there was some decrease in straight bankruptcy cases and in Chapter Eleven cases, the filings in both categories were the second highest in history. The most significant drop in filings, a 18.5 percent reduction, occurred in Chapter Thirteen. However, the total filings under Chapter Thirteen, 33,579, also is the second highest in history under that Chapter.

A total of 237,793 cases were closed in 1976. This is 45,000





more cases than the number closed in 1975 and the largest number of cases ever closed in a year.

However, despite the record number of cases closed in 1976, with the continued high volume of filings in 1976 the pending caseload continued to increase

to a record 271,039.

At the close of 1976, there were 200 full-time and 29 part-time referee positions or a total of 229 positions authorized. There were 1,402 clerical positions authorized at the close of 1976.

Statistical	Non-				
Year	Business	% of Total	Business	% of Total	Total
1967	191,729	92.0	16,600	8.0	208,329
1970	178,202	91.7	16,197	8.3	194,399
1973	155,707	89.9	17,490	10.1	173,197
1975	224,354	88.2	30,130	11.8	254,484
1976	211,348	85.7	35,201	14.3	246,549

## PROBATION OFFICER EXCELLENCE AWARD NOW INSTALLED AT FJC

At a special commemorative ceremony at the Federal Judicial Center recently, a replica of the Richard F. Doyle Award which honors an outstanding federal probation officer each year was mounted in a prominent location in the center.

The Doyle Award has been presented each year since 1974 to a federal probation officer in recognition for outstanding contributions toward the improvement of the Federal Probation System.

The award has three purposes: To enhance public opinion of federal probation officers; to recognize federal probation officers who have made outstanding contributions to the system; and, to recognize professional developments establishing new techniques toward the improvement of the Federal Probation System.

The award is named for Richard F. Doyle, retired chief probation officer from the Eastern District of Michigan and first president of the Federal Probation Officers Association.

## PERSONNEL

### Appointments

Ellen B. Burns, U.S. District Judge, D.Conn., May 20  
Almeric L. Christian, Chief Judge, District Court of the Virgin Islands, May 1.  
Gustave Diamond, U.S. District Judge, W.D.Pa., May 24  
Daniel M. Friedman, Chief Judge, U.S. Court of Claims, May 24  
Paul A. Simmons, U.S. District Judge, W.D.Pa., May 3  
Robert W. Sweet, U.S. District Judge, S.D.N.Y., May 18  
Donald E. Ziegler, U.S. District Judge, W.D.Pa., May 22

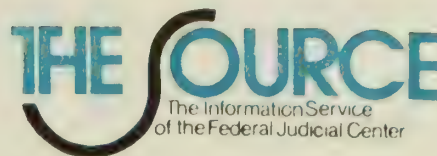
### Elevations

George H. Barlow, Chief Judge, U.S. District Court, D.N.J., May 15  
Howard C. Bratton, Chief Judge, U.S. District Court, D.N.M., April 6

### Nominations

Santiago E. Campos, U.S. District Judge, D.N.M., June 2  
Shane Devine, U.S. District Judge, D.N.H., May 17  
Mary Johnson Lowe, U.S. District Judge, S.D.N.Y., May 10  
Louis H. Pollak, U.S. District Judge, E.D.Pa., June 7

(See PERSONNEL, P. 8)



Publications are primarily listed for the reader's information. Those in bold face are available from FJC Information Service.

- The Care and Feeding of Trial Judges. Donald T. Barbeau. 4 #1 Brief/Case 35-42 (Spring 1978).

- The Code of Judicial Conduct—the First Five Years in the Courts. E. Wayne Thode. 1977 Utah L. Rev. 395-422.

- The Context of Public Bureaucracies: an Organizational Analysis of Federal District Courts. Wolf V. Heydebrand. 11 Law & Society Rev. 759-821 (Summer 1977).

- The Effect of Peremptory Challenges on Jury and Verdict: an Experiment in a Federal District Court. Hans Zeisel & Shari Seidman Diamond. 30 Stan. L. Rev. 491-531 (Feb. 1978).

- The Litigants Search for Able Advocates: the American and British Systems. Irving R. Kaufman. Address before the Fifteenth Annual Meeting of the Virginia Bar Association, January 13, 1978.

- Settling the Blockbuster Case. Otto R. Skopil, Jr. [Unpublished, 1978].

- Patterns and Strategies of Court Administration in Canada and the United States. Carl Baar. 20 Administration Publique du Canada 242-274 (1977).

- Powers, Duties and Operations of State Attorneys General. National Association of Attorneys General. 1977.

- Standards Relating to Judicial Discipline and Disability Retirement; American Bar Association. 1978.

- Unreported Decisions in the U.S. Courts of Appeals. 63 Cornell L. Rev. 128-148 (Nov. 1977).





# DOJ FJC calendar

June 26-27 Court Management Workshop for Probation Officers, Little Washington, NC  
 June 27-30 Video Production Workshop, Philadelphia, PA  
 June 27-30 Crisis Intervention Seminar for Probation Officers, Minneapolis, MN  
 June 28-29 Workshop for District Judges (3rd Circuit), Cherry Hill, NJ  
 June 28-July 1 Fourth Circuit Conference, White Sulphur Springs, WV  
 July (date open) Seminar for Assistant Federal Defenders, Baltimore, MD  
 July 6 Judicial Conference Bankruptcy Committee, New York, NY  
 July 6-7 Judicial Conference Advisory Committee on Civil Rules, Washington, DC  
 July 6-7 Judicial Conference Advisory Committee on Criminal Rules, Washington, DC  
 July 8-9 Training for Judges' Secretaries, San Francisco, CA  
 July 10-11 Judicial Conference Subcommittee on Supporting Personnel, Houston, TX  
 July 10-12 Workshop for Interpreters, Phoenix, AZ

July 10-12 Management Training for Supervisors, Sacramento, CA

July 13-14 In-Court Management Training Seminar, Burlington, VT

July 17-18 Judicial Conference Standing Committee on Rules of Practice and Procedure, Washington, DC

July 18-21 Orientation Seminar for Part-Time Magistrates, Denver, CO

July 19-22 Tenth Circuit Conference, Colorado Springs, CO

July 24-25 Judicial Conference Jury Committee, Hanover, NH

July 24-25 Workshop for Personnel Clerks, San Francisco, CA

July 24-28 Advanced Seminar for Pretrial Services Officers, Cincinnati, OH

July 25-26 Management Training for Supervisors, Columbia, SC

July 25-27 Judicial Conference Review Committee, Denver, CO

July 26-27 Judicial Conference Advisory Committee on Judicial Activities, Denver, CO

July 27 Time Management Seminar, Columbia, SC

July 28 Time Management Seminar, Charleston, SC

July 28 Judicial Conference Joint Committee on Code of Judicial Conduct, Denver, CO

## NEW FJC PUBLICATION AVAILABLE

Observation and Study: Critique and Recommendations on Federal Procedures. A Study pertaining to the use of professional evaluation to support sentencing decisions under 18 USC §4205(c) and 5010(e). FJC R-77-13.

(PERSONNEL, from P.7)

### Confirmations

Robert F. Collins, U.S. District Judge, E.D.La., May 17

Cristobal C. Duenas, Judge, District Court of Guam, May 17

Adrian G. Duplantier, U.S. District Judge, E.D.La., May 21

Harold H. Greene, U.S. District Judge, D. of Col., May 17

Alfred Laureta, Judge, District Court of the Northern Mariana Islands, May 17

Leonard B. Sand, U.S. District Judge, S.D.N.Y., May 17

Jack E. Tanner, U.S. District Judge, E.&W.D.Wash., May 17

### Withdrawal

Len J. Paletta, U.S. District Judge, W.D.Pa., May 25

### Deaths

Robert P. Anderson, U.S. Senior Circuit Judge, 2nd Cir., May 27

John C. Bowen, U.S. Senior District Judge, W.D.Wash., May 27

THE THIRD BRANCH  
VOL. 10 NO. 6 JUNE 1978

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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## Bulletin of the Federal Courts

UNIVERSITY OF ILLINOIS

OL. 10 No. 7

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JULY, 1978

AUG 04 1978

### ANTITRUST COMMISSION UNDERWAY

The National Commission for the Review of Antitrust Law and Procedures has held its organizational meeting and will be conducting public hearings through the end of July.

The Commission, created by Executive Order 12022, will study and make recommendations in two main areas. In the first, the Commission will consider revisions in procedural and substantive rules of law to expedite and improve complex antitrust litigation. In the second area, it will examine current justifications for the retention of the various exemptions and immunities from the antitrust laws.

The Executive Order establishing the Commission set a six-month period for the commission to undertake these studies and make final recommendations.

(See ANTITRUST p. 3)

### SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES

The Federal Judicial Center has announced the dates for the next seminar for newly appointed United States District Judges.

The seminar will open with the usual open house at the Dolley Madison House Sunday evening, November 12, and will conclude on Saturday, November 18.



Judges Frederick B. Lacey (D.N.J.), left, Alvin B. Rubin, (CA-5), center, and Charles B. Renfrew, (N.D. CA.) confer at the Dolley Madison House prior to testifying before the Antitrust Commission this month.

### DISPUTE OVER SPLITTING FIFTH CIRCUIT DELAYS JUDGESHIP BILL

The Omnibus Judgeship Bill which would create over 150 new judgeships at both the district and circuit levels has been delayed by controversy over the question of whether the Fifth Circuit should be split.

There is no longer any dispute over the number of judgeships, 117 for the district courts and 35 for the courts of appeals, or the "merit selection" proposal in the bill. However, in the joint conference committee, members of the House and Senate have been unable to reach agreement on the question of creating a new circuit out of the present Fifth Circuit by splitting off Louisiana and Texas.

Senator James O. Eastland of Mississippi, retiring chairman of the Senate Judiciary Commit-

tee, has taken the position that the Fifth Circuit should be split, a proposal which most of the House conferees oppose.

Some civil rights groups have opposed splitting the Fifth along the lines advocated by Senator Eastland on the ground that it would make the remaining states in the Fifth Circuit a forum in which, they contend, civil rights cases will not be heard fairly.

In addition, some conferees believe that a single circuit consisting of just Texas and Louisiana would be too easily influenced by petroleum industry interests which are located in those states.

Representative Peter W. Rodino, Jr., Chairman of the

(See DISPUTE p. 4)



## A.O. RELEASES WORKLOAD STATISTICS

The Administrative Office of U.S. Courts has just released federal court workload statistics for the period April, 1977—March, 1978 which reveals that for the nine month period ended March 31 of this year, civil cases were up slightly in the district courts while pending bankruptcy cases dropped slightly.

### Summary of Activity

During the twelve month period ended March 31, new filings in the courts of appeals totaled 18,591, a drop of 3.3 percent from the 19,233 cases filed during the comparable period last year. Terminations of appeals increased by 2.7 percent from the 17,406 last year to 17,880 this year, but with the level of dispositions still below that of filings by over 700 cases, the pending caseload rose 4.6 percent from 15,482 last year to 16,193 as of March 31.

Nearly all circuits reported declines in appeals docketed with only the Fourth and the Ninth Circuits countering the trend, each increasing by 8.1 percent. The Eighth Circuit dropped by nearly 16 percent from 1,165 cases, while the Second Circuit's filings fell by 359 cases to 1,795.

### Cases Under Submission in the Courts of Appeals

Circuit judges reported 438 cases held under submission which have been heard or submitted more than three months before March 31. This is an 18.7 percent increase over the 369 cases reported on March 31, 1977. A total of 308 cases had been submitted more than three but less than six months, 49 for more than six but less than nine months, 36 for more than nine months but less than one year and 45 cases for more than one year.

The Third Circuit Court of Appeals, the Court of Claims

and the Temporary Emergency Court of Appeals reported no cases under submission over 90 days as of March 31. The CCPA reported two cases which had been awaiting an opinion more than three but less than six months.

### District Courts

The incoming civil caseload in the district courts rose by 5.5 percent during the twelve month period ending March 31 as 136,258 civil actions were filed. The courts were able to terminate 122,224 cases, an increase of 6.2 percent over the 115,066 cases terminated a year ago. Total case dispositions did not exceed filings, resulting in an increase of 14,034 in the pending caseload. This was a new record level of cases pending, a jump of 9.3 percent for the twelve month period.

Of the 94 district courts, there were 66 which showed increases in filings while 28 recorded declines. The changes ranged from an increase of 91.5 percent in the Southern District of Florida to a decrease of 61.8 percent in the Virgin Islands. The change in the Florida court stemmed primarily from a major rise in land condemnation cases while the drop in the Virgin Islands was due entirely to the transfer of jurisdiction to the newly organized Virgin Islands court system.

The 6.2 percent increase in terminations resulted from 67 courts registering gains in the number of terminations. The largest percentage increase in terminations was in the Eastern District of North Carolina—up by 90.5 percent—and Rhode Island which was up by 90.2 percent.

Pending cases in the 94 district courts kept climbing, reaching a total of 164,660 as of March 31. A total of 73 district courts showed increases in their pending caseload while 21

## JUSTICE INSTITUTE PROPOSED

On July 10, President Jimmy Carter unveiled the Administration's proposal to phase out the Law Enforcement Assistance Administration and establish a National Institute of Justice.

The Institute would be within the Department of Justice and contain three primary components: A civil and criminal justice research body, a bureau of justice statistics, and a grant-making agency.

*The Third Branch* will provide further information concerning the proposed National Institute of Justice in a future issue.

showed a decline. The 5.5 percent increase in civil filings for the 12 month period ending March 31, stemmed mostly from an increase of 49.1 percent in real property actions which in turn, was a result of the increase in land condemnation cases which increased 139.6 percent from 2,581 to 6,183 cases. Of the total, 4,680 were filed in the Southern District of Florida.

### Criminal Caseload

During the twelve month period ending March 31, 1978 criminal filings decreased to 37,380 cases or a 10 percent drop compared to the previous twelve months. Terminations were down by 15.9 percent from 44,351 last year to 37,298 this year.

Filings exceeded termination by 82 cases, resulting in a pending caseload of 17,230 cases in March 31, 1978, a slight increase of one-half of one percent above the pending caseload of a year ago.





## SECOND CIRCUIT HONORED FOR EFFICIENCY

A special session of the Second Circuit Court of Appeals was held June 26 to mark five years of "cleaning up the backlog" of the Court.

For the last five years, the Second Circuit Court of Appeals has disposed of more appeals each year than the number which were filed.

The hour-long ceremony featured remarks by Attorney General Griffin B. Bell who also read a congratulatory letter from President Carter paying tribute to the efficiency of the Court.

In the year ended June 30, some 1,850 cases were disposed of which is fifty more than will have been filed.

The Attorney General praised the Court for its "extraordinary accomplishments" and The Chief Justice sent the Court a letter in which he said it has accomplished "near miracles."

Chief Judge Irving R. Kaufman said that the Court has taken steps "to stay afloat" and pointed out that "in cases with little jurisprudential value, our Court has employed the English practice of deciding appeals orally from the bench, with a fairly comprehensive statement [the] reasons for our decisions."

ANTITRUST from p. 1)

The following major problems have been identified by the Commission staff:

Inherent complexity of facts  
Lack of adequate judicial

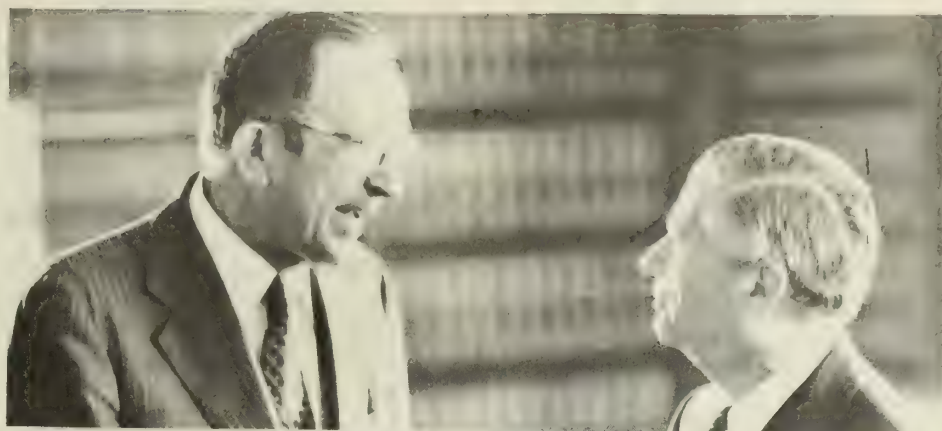
Self-Branch

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Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.



Attorney General Griffin B. Bell, left, with Chief Judge Irving R. Kaufman at session commending Second Circuit Court of Appeals.

management and control

- Incentives to delay
- Lack of specificity in pleadings and contentions
- Breadth and burden of discovery
- Dilatory behavior and harassing tactics
- Inefficient evidentiary practices
- Problems of structural remedies
- Unclear attempt to monopolize standards

To resolve these problems, a number of proposals are being considered:

- Imposition of time limits
- Increased sanctions for dilatory tactics
- Financial disincentives for delay
- Panel of judges with expertise in antitrust law
- Greater issue definition earlier in pretrial
- Narrower scope of discovery
- Greater use of previously discovered material
- Increased use of masters and magistrates
- Increased use of time-saving evidentiary practices
- Improved methods for effecting structural relief
- Clarify standard for attempt to monopolize

Persons desiring further information about the work of the Commission are invited to contact Timothy G. Smith, Staff Director, Department of Justice, Washington, D.C. 20530.

## THIRD CIRCUIT ADOPTS TWELVE MONTH SCHEDULE

Chief Judge Collins J. Seitz announced recently that the Third Circuit Court of Appeals began a twelve-month schedule, beginning this month.

He said, "The judges of the Court have unanimously adopted the twelve month schedule—a significant break from tradition—as part of the Court's long standing and continuing policy of promptly deciding its heavy volume of cases—a policy of maintaining a state of currency. The Court has been able to maintain a state of currency despite a growing caseload since 1973."

Before the twelve-month schedule was adopted it was reviewed and approved by the Lawyers Advisory Committee of the Third Circuit.

Under the new schedule, the Court will, for the first time, be sitting regularly in July and August to hear appeals on the merits and motions. In the past, only "motions panels" were convened in these months.

The new schedule will provide more flexibility for the court in scheduling sessions and calendaring cases to better cope with surges in the work load.





## ARBITRATION PLAN DISCUSSED

A conference focusing upon arbitration under local district rule was held in recent weeks. The all-day meeting was held under the sponsorship of the Office of Improvements in the Administration of Justice at the Department of Justice and chaired by Assistant Attorney General Daniel J. Meador. Among those in attendance were Chief Judge T. Emmet Clarie (D. Conn.), Chief Judge Joseph S. Lord, III (E.D. Pa.), Chief Judge Robert F. Peckham (N.D. Calif.), and Judge William W. Schwarzer (N.D. Calif.). Others included personnel from the Department of Justice, the Administrative Office of the U.S. Courts, Federal Judicial Center, and Congressional staff.

At an informal luncheon between working sessions, the use of arbitration was praised by Chief Justice Warren E. Burger, Attorney General Griffin Bell, and Senator Dennis DeConcini (D. N.M.), Chairman of the Senate Subcommittee on Improvements in Judicial Machinery.

The working sessions were intended to discuss among the parties the different approaches towards arbitration taken in the three districts mentioned above, as well as the Voluntary Masters Pilot Program of the Southern District of New York introduced by Chief Judge David N. Edelstein. The meeting was also helpful in providing feedback relative to the Justice Department draft bill, which calls for a three-year experiment in the use of arbitration in a minimum of five to eight districts and any other interested districts.

Among the subjects discussed were the type of cases selected for arbitration, who classifies those cases, the selection and possible compensation of arbitrators, and discussion of the criteria the

## INSTITUTE FOR COURT MANAGEMENT GRADUATES TENTH CLASS

The Supreme Court of the United States was the scene for the Institute for Court Management's tenth graduation ceremonies last May. Thirty-two certificates were presented after the group had heard talks from both The Chief Justice and FJC Director A. Leo Levin.

The Institute, started in 1969, reported in its 1977 annual report that, since 1970, 277 individuals representing 41 states, the District of Columbia, the Navajo Nation, Canada and the Philippines have completed their Court Executive Development Program, thereby earning certification as Fellows of the Institute for Court Management.

Today approximately 50% of those certified now serve as the administrators or on the administrative staffs of general, limited and special jurisdiction trial courts.

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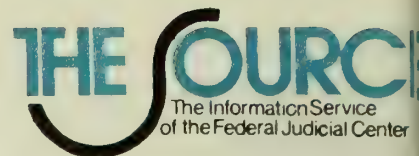
(DISPUTES from p. 1)

House Judiciary Committee, believes that the judgeship bill should not be used as a vehicle for splitting the Fifth Circuit and that such complicated action should be considered in separate legislation.

Some believe that final action on the judgeships bill will come just before the Congress adjourns. The bill may then be hastily passed in the final days of the current Session when the conferees will be anxious to leave before the congressional elections.

---

Federal Judicial Center will use to evaluate the program including the effect of arbitration on the number of filings; on the number of trials; judge magistrate and clerical time saved; savings in disposition time; and savings to litigants in the cost of litigation.



Publications are primarily listed for the reader's information. Those in bold face are available from FJC Information Service.

**The Expansion of Federal Jurisdiction and the Crisis in the Courts.** Harry Phillips. 31 *Vand. L. Rev.* 17-26 (Jan. 1978).

**Crisis in the Courts: Proposal for Change.** Griffin B. Bell. 3 *Vand. L. Rev.* 1-15 (Jan. 1978).

**Determinate Sentencing Reform or Regression?** Proceedings of the Special Conference on Determinate Sentencing, June 2-3, 1977, Boalt School of Law, University of California, Berkeley. LEA, March 1978.

**Managing Information in the Big Case: Time for a Cooperative Experiment.** Arthur R. Miller. *Litigation* 8-11 + (Spring 1978).

**A Matter of Color.** A. Leo Higginbotham. Oxford University Press, 1978.

**The Scientist in the Courtroom: A Heady Experience with Many Dangers.** Eugene Garfield. 10 *Current Contents* 10 (June 12, 1978).

**Symposium: Computers, Law and Society.** 1977 *Wash. L.Q.* 372-540.

**In Praise of Local Rule.** Steven Flanders. 62 *Judicature* 28-36 (June-July 1978).

**Report on Judicial Business of the United States Courts of the Sixth Circuit, Nashville, Tenn.** May 11, 1978.

**Towards a New Mode of Conflict Resolution in Civil Matters.** Lewis D. Solomon, Williams S. Richards. 27 *DePaul L. Rev.* 1-22 (Fall 1977).

**Trial Advocacy Competency: the Judicial Perspective.** Dorothy Linder Maddi. 1977 *ABF Res. J.* 105-151.



## Status Report

### MAGISTRATES BILL CLEARS HOUSE COMMITTEE

The House Committee on the Judiciary voted on June 6th to report favorably S. 1613, The Magistrate Act of 1978. The vote on the bill to clarify and expand the jurisdiction of United States magistrates was 23-7. A formal report on the legislation has not been filed.

The bill would expand the jurisdiction of magistrates in criminal cases by empowering them to try any misdemeanor case. Under present law, a magistrate may try only those misdemeanors which involve a possible fine of \$1,000 or less. In civil litigation, the bill would provide explicit authority for a magistrate to try any case, with or without a jury, upon the consent of the parties. Finally, the bill would provide for stricter procedures for the selection of magistrates.

The version of the bill approved by the House Committee differs from that passed by the Senate on July 2, 1977 in several particulars, though the basic jurisdictional elements are similar. In criminal cases, the Senate bill would authorize a magistrate to try any petty offense case without the affirmative, written consent of the defendant. The Senate bill would also expressly permit a juvenile accused of a petty offense to be issued a violation notice and would afford the juvenile an opportunity to post and forfeit collateral on the charge, without invoking the procedures of the Juvenile Delinquency Act. Both of these provisions have been deleted in the version approved by the House Committee.

The House Committee included in the bill two administrative provisions not found in the Senate version. Under the House proposal, the Director of the Administrative Office of the United States Courts would be

required to submit a report every two years to the Congress. The report would contain detailed statistical information concerning the number of civil cases referred to magistrates under the new law and the prosecution of appeals in such cases. The Director would also be required to include in the report information as to the professional qualifications and backgrounds of individuals appointed to serve as United States magistrates. The second provision added by the House Committee would expressly authorize the attendance of a court reporter at any civil trial conducted by a magistrate unless the parties, with the approval of the magistrate or a judge, agree that the attendance of a court reporter would not be necessary.

In addition, the House Committee has tightened the bill's provisions for selecting magistrates. The Senate version would require the Judicial Conference to promulgate qualification standards and selection procedures for magistrates. The House bill would require selection of magistrates through Merit Selection Panels, appointed by the district courts, which would be similar to panels now assisting in the selection of some district and all circuit judges.

When a formal report is filed by the House Judiciary Committee, the bill will be referred to the Rules Committee of the House. Thereafter, it will be brought before the full House for consideration. If the bill passes the House, differences between the House and Senate versions would still have to be resolved before final enactment of the expanded and clarified jurisdiction of magistrates.



Chief Judge Oliver Seth

### TENTH CIRCUIT HOLDS ANNUAL MEETING IN COLORADO

Chief Judge Oliver Seth opened the Tenth Circuit annual Judicial Conference this month at Colorado Springs.

Speakers at the meeting included representatives of business, medicine and other circuits. Justice Byron R. White, Circuit Justice and a native Coloradan, discussed recent Supreme Court decisions. Judge Shirley M. Hufstедler of the Ninth had as her subject, "Some of My Best Friends Are Lawyers." She discussed criticism of the bar generally, and specifically the competency of lawyers to adequately represent their clients—a timely subject these days.

Judge Elmo B. Hunter (W.D. Mo.), Chairman of the Court Administration Committee, talked about recent proposals in the law of diversity jurisdiction.

Representing the Administrative Office were Edward V. Garabedian and James E. Macklin, Jr. and Director A. Leo Levin represented the Federal Judicial Center.





## FRIEDMAN TAKES OATH AS CHIEF JUDGE U.S. COURT OF CLAIMS

Daniel M. Friedman became the Eleventh Chief Judge of the United States Court of Claims May 24, 1978. Chief Justice Burger presided over the ceremony at the Court of Claims in Washington, D.C. Chief Judge Friedman succeeds Chief Judge Wilson Cowen who retired March 1, 1977.

The Court of Claims was established in 1855 to provide a forum in which individual citizens and corporations could sue the Federal Government for money damages. The Court has jurisdiction over a wide variety of claims where Congress has waived sovereign immunity.

Because the Federal Government is the Nation's largest contractor, purchaser and employer, the Court has a heavy volume of cases often involving complicated technical issues and large amounts of money.

The Court's final judgments are subject to review only by the Supreme Court on writ of *certiorari*.

Judge Friedman was born in New York City in 1916. He graduated from Columbia Law School in 1940. In 1962 Judge Friedman was appointed Second Assistant to the Solicitor General, and in 1968 First Assistant. He has argued more than 75 cases before the Supreme Court including *Buckley v. Valeo* concerning the constitutionality of the Federal Election Campaign Act of 1971, and *Butz v. Economou* decided June 29, 1978, in which the Court examined whether executive officials of the Federal Government have absolute or qualified immunity in civil suits for damages against them based upon actions taken as part of their official duties. He worked on and was responsible for briefs in hundreds of cases.

Judge Friedman received the Attorney General's Exceptional



Chief Judge Daniel M. Friedman

### More on Advocacy

## ABA POLL SHOWS 60% FAVOR CERTIFICATION REQUIREMENT

Chief Justice Burger's speech on lawyer competency last February sparked a number of developments--articles, panel discussions, speeches and surveys. The Chief Justice has estimated that between one-third and one-half of the lawyers in this country are underqualified to represent their clients in the courts.

The most recent survey was done by a New York public opinion research firm at the instigation of the American Bar Association *Journal*. The results of the survey are reported in the June issue.

The survey shows there is a "high degree of acceptance" for the Chief Justice's assertion and was, the *Journal* article states, "surprising in view of the fuss raised by Burger's statements. . . ."

Five hundred and ninety-nine lawyers were polled through telephone interviews. When queried as to whether they would agree with the Chief Justice, 41% said yes; 51% replied in the negative; and 8% were uncertain.

The breakdown by categories showed that the majority (51%) of lawyers interviewed, with

Service Award in 1969; the Tom C. Clark Award from the District of Columbia Chapter of the Federal Bar Association in 1976; and the National Civil Service League Career Service Award in 1976.

incomes of \$50,000 or more and those working in large law firms, replied in the affirmative. Negative replies came from lawyers in smaller cities, smaller incomes, and from small- to middle-sized law firms.

The percentages on the affirmative side were even higher when an inquiry was made as to whether they would favor a specialty certification requirement for trial advocates—a total of 60% (and a high of 72% for litigation when they were queried as to whether this certification should be specifically required for a generalist, a business lawyer or a litigation lawyer).

As for what to do about it again there were differences. The majority did not favor increased judicial authority to deal with poor advocacy. Law school training received the broadest general approval but ranked behind approval for an apprenticeship training period "as the single most important step to combat poor advocacy. . . ."

Still another report, published in May by the Educational Testing Service, reflects that the Chief Justice's estimate may be too low. They questioned 1,600 alumni of six law schools, and practicing attorneys.

Here are some of the results of the ETS survey, based on the interviews:

- Sixty percent said their education had not prepared them to investigate facts.

- Sixty-nine percent indicated they had not learned how to counsel clients.

- Seventy-seven percent felt they left their law school unprepared to negotiate settlements.

- Of the 47.4% who did try and litigation work 19.6% said they received no law school training in this area, and 10.8% said that which they did receive was of no use.

As for the cures, the ETS survey puts the blame not so



## BOLIVIAN, CANADIAN PRISONER TRANSFERS UNDERWAY

Prisoner transfers with Bolivia and Canada are now in progress. The first American prisoners were transferred back to the United States from Bolivia late July and the transfer of transfer of Canadian and American prisoners is set for early September.

At a planning meeting held July 6th in Chicago, representatives of the Administrative Office Criminal Justice Act

which at the door of the law school but more with the state examiners. They would opt for a national program which would call for certification only after lawyers had shown themselves to be competent and knowledgeable in substantive law and able to serve as an advocate. And, they would have specialized certification standards set by a national organization comprised of both state and federal representatives. They see potential for progress should all 50 states action with 50 systems and federal courts and federal agencies all operate with different standards.

Paul Seligman, an Assistant Professor of Law at Northern University, writing in *Hartford Courant* after the report was released, ended his article with: "The message of the ETS survey is clear: We must act at once to ensure every American who hires a lawyer has someone who knows what he is doing."

In a press release from the Supreme Court July 17, commenting on these surveys, Chief Justice said he would meet in August with the members of the Judicial Conference Committee to propose Standards for Admission to Practice in the Federal Courts. That committee, headed by Chief Judge Edward

Division, several United States Magistrates, a representative of the Bureau of Prisons and prison transfer coordinator Michael Abbell who is Special Assistant to the Assistant Attorney General of the Justice Department Criminal Division, discussed the transfer of Canadian and American prisoners.

Over 200 American inmates are in Canadian prisons and about 95 Canadians in American prisons. The transfers between Canada and the United States as well as between Bolivia and this country will be the first under the respective treaties. They follow the continuing transfer of prisoners between the United States and Mexico.

The treaties between each nation require each nation to agree to each transfer and each prisoner to voluntarily agree to the transfer. A transferred prisoner may contest his conviction only in the country in which he was convicted.

At the Chicago meeting Magistrate Ronald J. Blask (S.D. Tex.) and federal defender Charles Szekeley (S.D. Tex.) discussed the problems which they encountered during the initial transfer of Mexican and American prisoners.

Transfer coordinator Abbell said preliminary discussions have been held with Peru, Turkey, West Germany and Panama on the future prisoner transfers. The transfer of prisoners between United

J. Devitt (D. Minn.) has been studying advocacy in the federal courts for the past two years. At the August meeting members of this committee will review drafts of proposals for a new system promoting a higher level of competence in federal trial court advocacy.

### Rule 23(b)(3)

#### LEGISLATION TO BE INTRODUCED ON CLASS DAMAGE ACTIONS

The Department of Justice has been developing a draft statute proposing changes governing class damage actions presently brought under Rule 23(b)(3).

At its meeting last March, the Judicial Conference of the United States reviewed a report and recommendations from the Advisory Committee on Civil Rules, and thereafter approved in principle the revision of Rule 23(b)(3) of the Federal Rules of Civil Procedure by direct legislative enactment, rather than through rule-making authority. However, the Judicial Conference reserved for further consideration "the merits of any specific statutory proposals and the appropriateness of dealing with specific aspects of such proposals through the rule-making authority."

Specific proposals for changes in class damage actions are currently being reviewed by the Office of Management and Budget. As soon as this review is completed, which should occur by the end of July, the Department of Justice will urge the introduction of legislation based on its recommendations.

When the text of the final bill becomes available, a detailed report on this legislation will be printed in *The Third Branch*.

States and Panama is required under the recently ratified Panama Canal Treaties.

Federal defenders Edward F. Marek (N.D. Ohio) and Thomas White (W.D. Pa.), and assistant defenders Bernard Velasco (D. Ariz.), Thomas Hillier (W.D. Wash.), Donald N. Krosin (N.D. Ohio) and Richard Walsh (N.D. Ill.) will participate in various aspects of the prisoner programs with Canada and Bolivia.



# PERSONNEL

## Nominations

Jose A. Gonzalez, Jr., U.S.  
District Judge, S.D. FL, July 6

## Confirmations

Santiago E. Campos, U.S. Dis-  
trict Judge, D.N.M., July 10

Shane Devine, U.S. District  
Judge, D.N.H., June 23

Mary Johnson Lowe, U.S. Dis-  
trict Judge, S.D.N.Y., June 23

Louis H. Pollak, U.S. District  
Judge, E.D. PA, July 10

Robert H. McFarland, U.S. Dis-  
trict Judge, D. Canal Zone,  
July 10

## Deaths

Louis Hoffman, Municipal Court  
of the Virgin Islands, June 18

Luther W. Youngdahl, U.S. Sr.  
District Judge, District of  
Columbia, June 21

Terry L. Shell, U.S. District  
Judge, E.&W. D.AK, June 25

## Appointments

Robert F. Collins, U.S. District  
Judge, E.D. La., May 31

Harold H. Greene, U.S. District  
Judge, Dist. of Columbia,  
June 21

Adrian G. Duplantier, U.S. Dis-  
trict Judge, E.D. La., June 1

Jack E. Tanner, U.S. District  
Judge, E. & W. WA, June 2

Cristobal C. Duenas, U.S. Dis-  
trict Court of Guam, June 15

## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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Federal Judicial Center

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United States District Court  
Eastern District of Virginia  
Director Emeritus

## REPORT RELEASED ON CENTRAL LEGAL STAFFS

A new FJC monograph on the  
use of central staffs by the  
judiciary in each of the U.S.  
Courts of Appeals is now  
available in the Information  
Service Office.

Central staff consist of  
lawyers, located at circuit  
headquarters, who work for the  
court as a whole. They function

# doofjc calendar

Aug. 1-2 Judicial Conference  
Court Administration Com-  
mittee; Colorado Springs, CO

Aug. 7-9 Management Train-  
ing for Supervisors; Oxford,  
MS

Aug. 14-16 Committee of the  
Judicial Conference of the  
United States to Consider  
Standards for Admission to  
Practice in the Federal Courts  
Mackinac Island, MI

Aug. 14-15 Meeting of the  
Board, Federal Judicial  
Center, Mackinac Island, MI

Aug. 14-16 Workshop for Dock-  
et Clerks; Salt Lake City, UT

Aug. 20-23 Eighth Circuit  
Judicial Conference  
Brainerd, MN

Aug. 23-25 Basic Instruction  
Technology Workshop; Louis-  
ville, KY

Aug. 24-25 Judicial Conference  
Budget Committee; Dearborn,  
MI

Aug. 28-29 Workshop for Pe-  
rsonnel Clerks; Milwaukee, WI

Aug. 28-30 Advanced Instruc-  
tional Technology Workshop  
Louisville, KY

Aug. 28-Sept. 1 Advanced Ser-  
minar for Pretrial Services  
Officers; Pittsburgh, PA

in all the circuits now; however  
their tenure and responsibilities  
vary throughout the circuit.  
Creation of these positions was  
a response of the federal courts  
to meet the rapid increase in the  
work load in the appellate  
courts.

THE THIRD BRANCH  
VOL. 10, No. 7 JULY 1978

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### REPORT RECOMMENDS DISCOVERY CUT-OFF DATES

The Federal Judicial Center has released "Judicial Controls and the Civil Litigative Process: discovery", the second of three volumes to be published from the District Court Studies project.

The report shows a strong relationship between the disposition of discovery cut-off dates and shortened elapsed discovery time. It also indicates a reduction in overall case disposition time in cases before judges who use strong discovery controls. The report was based on an analysis of docketed discovery activity in a sample of over 3,000 terminated cases drawn from six metropolitan district courts.

The report disclosed two reasons why reliance on control of discovery through attorney initiative is ineffective in securing timeliness.

First, despite widespread failure on the part of attorneys to observe the thirty-day period provided by the federal rules, compelling orders are rarely requested. This is so even though rulings on motions for compelling orders overwhelmingly favor the moving party.

Secondly, sanction motions are rarely filed.

Effective control, therefore, depends upon judicial case management exercised pri-

(See DISCOVERY P. 2)



Photograph courtesy the Curator's Office, Supreme Court of the United States.

On August 6, Lord Widgery and Chief Justice Burger, the heads of the judiciaries of England and the United States, joined in a ceremony to commemorate the first convening of the Supreme Court of the United States in New York City.

The setting was modern—a downtown New York City hotel—but the references were to a very old and very historic site.

The building pictured above is the old Royal Exchange Building, formerly at the foot of Broad Street in New York City. The Court met here for its first two sessions, reconvening in Philadelphia, then the National Capital, until 1800.

Unveiled at the close of the ceremony, was a plaque which will be placed near the site as a permanent reminder of the early history of the United States Supreme Court.

### SENTENCING STUDY ANNOUNCED

The Department of Justice recently announced the award of an \$897,124 contract for detailed research on sentencing practices in the federal courts.

The eighteen-month study will be conducted by the Institute for Law and Social Research of Washington, D.C.

"The study will develop extensive data that could be used, for example, in creating sentencing guidelines," Attorney General Griffin B. Bell said.

"Precise information on apparent disparities in sentences for the same offense will contribute to making the sentencing process more effective and fair."

The project will have three major components:

- Sentencing variations will be examined in six representative judicial districts to be selected.

Researchers will study the

(See SENTENCING P. 2)



## DISCOVERY from Page 1

marily under provisions of Rule 83 of the Federal Rules of Civil Procedure. This rule confers upon courts and judges the discretion to promulgate rules and otherwise regulate federal practice in any manner "not inconsistent with" the Federal Rules.

The amount of discovery activity in the sample cases was surprisingly low. More than half of the terminated cases under study had no recorded discovery requests. Cases having discovery ranged from those with only one request (10.5 percent of the total) to a case with sixty-two requests. Less than five percent of the cases had more than ten requests.

The report quantified the effects of case characteristics on the probable amount of discovery activity. The predictability of discovery makes it particularly suitable for case management.

The study examined strong discovery controls with respect to judges and courts. It was shown that:

- The stronger the extent of controls by judges and courts, the more time is saved in the discovery process
- Cases exhibit the same patterns of discovery requests regardless of the extent of controls
- Responses to discovery requests are prompter where strong controls are applied
- Controls do not result in additional burdens on judges because of greater use of motions to compel
- Gaps of time between discovery initiatives are substantially shortened when strong controls are applied

The ultimate benefit to judges and courts is from the shortened total case disposition time — elapsed time from case filing to termination — that results when strong controls are used. Judges exercising the strongest controls settled cases ten

## SENTENCING from Page 1

presentence reports of 3,000 convicted offenders and the files of U.S. Attorneys on an additional 1,800 persons sentenced after plea bargaining. They also will compare sentences with time actually served in prison.

• A series of special reports will be compiled on the effects of sentencing on offenders and the federal criminal justice system.

The project will develop information on how sentences relate to rehabilitation and to deterring crime by former offenders, as well as members of the general public. There also will be estimates on how much crime is prevented by imprisoning offenders. The cases of 1,200 offenders sentenced to probation, in addition to a sample of those sentenced to prison, will be examined.

• Opinion surveys will be taken of 1,200 persons in the general public, 450 federal judges, 100 U.S. Attorneys or assistants, 100 defense attorneys, 100 prison officials, and 150 offenders.

Members of the general public will be asked what they

consider appropriate sentences for various types of offenses and offenders and what punishments they believe most effective in preventing criminal behavior.

Judges and other justice system personnel will be asked for their detailed views on sentencing and the advantages and disadvantages of different types of sentencing systems.

There will be stringent safeguards to ensure the privacy of all persons from whom information is obtained.

A criminal code reform bill approved by the Senate and under review in the House would create a Commission to develop sentencing guidelines. Federal judges would not have to follow the Commission's guidelines but would be required to explain reasons for sentencing above or below guideline ranges. The Commission would be set up within two years of the bill's enactment.

The research project will develop hypothetical systems for creating sentencing guidelines but will not create guidelines themselves.

months sooner than those imposing limited or no controls and completed trials over a year sooner. Courts exercising the strongest controls settled cases eleven months sooner and completed trials almost two years earlier than courts exercising the least controls.

A discovery timing control model incorporating the relationships found in the data from the courts studied recommends a case management strategy for effective control of the discovery process:

- Invoke judicial controls as soon as the issues are joined by all parties
- Set discovery cut-off dates according to the guidelines

provided in the report

• Enlarge the cut-off date only if the moving party shows both active discovery during the initial control period and specific need for further discovery

• Terminate the discovery period shortly before the final pretrial conference. Both dates should be set in a single order to insure efficient transition from discovery to final pretrial conference

• Embody the essentials of the discovery timing control system in a local rule

Copies of the report may be obtained from the Information Service Office of the Federal Judicial Center.



## ANALYSIS: JUDICIAL DISQUALIFICATION STATUTE CONSTRUED

A Federal Judicial Center staff paper has been prepared at the request of the Joint Committee of the Judicial Conference of the United States on the Code of Judicial Conduct as an aid to judges in construing 28 U.S.C. 455, the judicial disqualification statute.

The provisions of the statute were substantially amended in 1974, and the staff paper entitled, *Decisions Construing the Judicial Disqualification Statute*, provides an analysis with annotations, of each subsection of the statute.

The statute establishes an objective standard for judicial disqualification under Section 455(a) and the moving party is required to show facts that would convince a reasonable man that a bias exists.<sup>1</sup> It has not yet been resolved, according to the staff analysis, whether this standard is to be viewed from the perspective of the litigant invoking the statute or from the objective standpoint of "reasonable man."

The statute not only abolishes the "duty to sit" doctrine, but lists five specific instances that mandate disqualification. The analysis explores each of the areas of personal bias or prejudice, conflict of interest, prior association, family relationships, and financial interest. The "personal bias or prejudice" required to be shown for disqualification under section 455(b)(1) has been defined as that which stems from an extrajudicial source and results in an opinion on the

merits on some basis other than what the judge learned from his/her participation in the case. Further, a judge should recuse himself/herself when the judge has "personal knowledge of disputed evidentiary facts concerning the proceeding." The requirement that the bias or prejudice be extrajudicial in origin led a court to hold that reading a defendant's presentence report does not constitute grounds for a judge to recuse himself/herself. Disqualification should occur, however, if a judge has received *ex parte* communications advising him of facts relevant to the case; however, conferences between the court and defense counsel *in camera* were held not to justify recusal if the conference took place with the consent of plaintiff's counsel.

Sections 455(b)(2) and (3) deal with potential conflicts resulting from the judge's prior status in either private or governmental practice. In one case, although petitioners did not allege personal bias or prejudice, the judge was disqualified because a former law partner had rendered professional services directly concerning the issues in controversy in the case.

Section (b)(3) requires disqualification only if a judge expresses an opinion regarding or has participated in the particular case before him. The former (employer) agency's position on issues or controversies *per se* will not cause disqualification. Similarly, a judge who is a former Government lawyer is not deemed to have been "associated" with the other lawyers in that agency if the judge had no exposure during his agency tenure to the case presently before him. Finally, a question often arises concerning matters that were at some stage of prosecution while the judge was a United States Attorney.

Carefully defining the word "case," the Seventh Circuit recently held, in *Barry v. United States*, that the statute had not been violated, because no case had existed against the defendants until after the judge in question had left the United States Attorney's office.

Although Section 455(b)(4) refers primarily to disqualification in cases of personal financial interests, it has been held that membership in a bar association was not an "interest" within the meaning of the subsection. It has been suggested, however, that the draftsmen of the Code of Judicial Conduct did have economic interests in mind when they wrote the provision upon which this subsection was based. Further, one commentator reasoned that other interests fall within the purview of Section 455(a).

Section 455(c) stipulates that the judge has a responsibility to be aware of his immediate family's financial interests as well as his own; the classifications in this requirement are similar to those set forth in section 455(b). Although subsection (b) was intended to be strictly construed, decisions have indicated that a judge must consider "the remoteness of the interest and its extent or degree" in determining whether to disqualify.

The amended statute allows waiver only where the disqualification plea is based on section 455(a), and then only after an on-the-record, full disclosure has taken place. Under Section 455(b), however, waiver is impermissible.

Copies of the paper may be obtained from the Federal Judicial Center Information Service Office.



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## CHIEF JUDGE PHILLIPS TO TAKE SENIOR STATUS

Judge Harry Phillips, who has been Chief Judge of the Sixth Circuit since August 25, 1969, has notified President Carter and Attorney General Bell that he will take senior status "effective upon the date of the commission of my successor." Chief Judge Phillips' communication added: "If my successor has not been appointed and confirmed, and his or her commission signed prior to January 15, 1979, my Senior Judge status will become effective at the close of business on that day."

The Judge's record shows that he has, during all his tenure on the Sixth Circuit Court of Appeals, put the work of that court above all other considerations. Typically, he added in his letter that he intended to continue to perform substantial judicial duties during the foreseeable future and that he



*Chief Judge Harry Phillips of the Sixth Circuit.*

was "motivated to take this step in order to provide a much needed additional judge for the Court. . . . Legislation now pending . . . would create two additional circuit judgeships [but] even with the addition of these two new judgeships, it will not be possible for our court to keep pace with our drastically increasing caseload."

Judge George C. Edwards, Jr., of Cincinnati, Ohio, will be Chief Judge Phillips' successor.

## COMPUTERS AID CASE CALENDARING AND JUDGE ASSIGNMENT

The Federal Judicial Center has just completed a project, through the use of computers, to help a case backlog problem occurring in the Ninth Circuit.

Calen 9 is a computer program on the Federal Judicial Center's Courtran computer, written at the request of the Court of Appeals for the Ninth Circuit. Its purpose is to automate the procedures already in use in the court for assigning cases on calendars and judges to panels. The case calendaring section is now operational, and has undergone several revisions in the process of becoming a useful administrative tool.

The program works according to procedures for grouping cases devised by Judge Shirley Hufstedler (CA-9) and adopted as official procedure by the Circuit Council. Staff attorneys

assign each case a "point count," based on its difficulty and the amount of time it can be expected to take to be heard. Relatively simple cases are worth one point; relatively difficult ones are given up to ten points. A panel can hear fifteen or sixteen points in a sitting. The computer is used simply to select cases from the backlog in groups of fifteen or sixteen points.

Criteria for grouping cases have included requiring that cases be from the same district to minimize the number of assigned judges who must be disqualified from sitting on a panel, and grouping cases by their subject matter, to maximize judge efficiency in hearing the group of cases.

In addition, the program recognizes that certain classes of cases with statutory and

other priority must be selected before others. For example, criminal appeals have the highest priority; and certain civil appeals (habeas corpus, immigration, OSHA, and the like) automatically receive next highest priority. Further, cases are given priority by virtue of having been pending for longer time than other cases. The program also permits individual cases to be ordered onto calendar (although not to particular one), or to be ordered off, at the request of the court. Finally, the program lists all calendars it puts together.

The data base is a list of cases maintained by court personnel. The maintenance procedure uses a standard Courtran text editor that gives the operator a great deal of flexibility in modifying case characteristics, correcting erroneously recorded information. The information maintained by the court goes beyond the minimal characteristics required by the computer program (docket number, subject matter, district, case name, and other information) and includes more complete categorical information, case status, and indicators of case complexity. Modifications to the form of the data require fairly substantial modification of the program.

The success of the program is primarily a result of the prior work done at the court to systematize its procedures for dealing with its backlog. The means by which staff attorneys assign "difficulty points" to cases predated the computer system, and was crucial to the system's proper functioning. Further, the dedication and capabilities of court personnel in learning to use and manipulate the system were crucial factors.

A final report on the operation and capabilities of Calen 9 is available from the Information Service at the Federal Judicial Center.



## SYMPOSIUM ON SELECTION, DISCIPLINE AND REMOVAL OF FEDERAL JUDGES HELD

A symposium, co-sponsored by the American Judicature Society and the Aspen Institute for Humanistic Studies, was held at Aspen, Colorado, last month to discuss an old subject — how federal judges should be selected and whether some procedure other than impeachment should be adopted for removal.

The group of twenty-five participants were all selected for their direct relationship to the federal judiciary or because of an expressed interest in the subject. They were law professors, writers, members of the Judicial Nominating Commissions who screen the candidates, a representative from the President's staff who is daily involved in the selection process, an Assistant Attorney General from the Department of Justice, and a lawyer from the Federal Judicial Center. Four federal judges (Judges Arlin Adams, William E. Doyle, Clement F. Haynsworth, Jr. and Donald P. Lay) and one nominee for a federal circuit judgeship (Theodore McMillian) were in attendance.

With such a mix of backgrounds and personalities there were bound to be differences. But there were also some good suggestions for bettering the process and there evolved a better understanding on just how the commissions are functioning. The bills introduced by Senators Sam Nunn (D-Ga.) and Dennis DeConcini (D-Ariz.) — the legislation which would handle discipline and removal apart of the impeachment process — received considerable attention.

Some things were immediately apparent, and one was that the commissions were functioning with little direction or prior knowledge as to how they should function, and perhaps one of the questions is whether

they *should* have direction or staff support. Commissioners present gained an insight as to how their counterparts in other jurisdictions performed their work. The different views on the legislation pending in Congress were mainly related to its constitutionality.

The Directors of the two organizations, Robert B. McKay (the Justice Program at the Aspen Institute) and George H. Williams (American Judicature Society) will later release statements about the symposium. Meanwhile, papers distributed at the meeting are available at the Center or through the Society.

During the month of August another meeting sponsored by the Justice Program will be held at Aspen. This one will be the third and final in a series of workshops put on in cooperation with U.S. District Judge Marvin E. Frankel (S.D. N.Y.). This gathering will take up adversary justice, and the participants will review a draft of Judge Frankel's book re-examining adversary justice.

### INFORMATION SERVICE ACQUIRES COMPUTER

The computer age has come to the Judicial Center's Information Service in the form of the *New York Times* Information Bank, an automated index developed by the *New York Times*. The data base consists of abstracts of *Times*' articles since 1969, and feature articles from about 70 other newspapers and periodicals.

Many inquiries about people, subjects and events have been answered by the Information Service staff with the assistance of the Information Bank. It has vastly increased the resources available to the Information Service and has increased the

### RESEARCH SERVICES OFFERED

Under a cooperative arrangement worked out between the Federal Judicial Center and the British/American Law Division of the Law Library of the Library of Congress, federal judges have been offered special research services in areas of the law that would otherwise be unavailable at their local libraries. During the past year, this service was utilized on almost one hundred different occasions, i.e., to compile sociological data, legislative history, and other projects.

The Library of Congress continues to welcome requests for research by federal judges.

speed with which certain information can be obtained.

Searches are performed by first consulting a thesaurus for consistent subject terminology, then typing the appropriate words on a computer terminal. Various names, subjects, dates and other bibliographic modifiers can be combined in order to narrow a search for specific inquiries.

Results of the combination of terms then appear on the terminal screen. The computer then indicates the number of articles found, plus an abstract of each article, and the name, date and page number of the publication. Often the abstract is sufficient to answer a question but copies of entire articles are available on request.

The Information Bank service is available to federal judicial personnel for official inquiries. The staff welcomes the opportunity to perform searches in answer to such inquiries.



# DOJ calendar

Aug. 23-25, Basic Instructional Technology Workshop; Louisville, KY

Aug. 24-25, Judicial Conference Budget Committee; Dearborn, MI

Aug. 28-29, Workshop for Personnel Clerks; Milwaukee, WI

Aug. 28-30, Advanced Instructional Technology Workshop; Louisville, KY

Aug. 28-Sept. 1, Advanced Seminar for Pretrial Services Officers; Pittsburgh, PA

Sept. 6-8, Sentencing Institute (Ninth Circuit); Goleta, CA

Sept. 6-8, Management Program for Executives; Detroit, MI

Sept. 7-8, Training for Judges' Secretaries; New York, NY

Sept. 7-9, Second Circuit Judicial Conference; Buck Hill Falls, PA

Sept. 9-10, Seminar for Court Reporters; Hartford, CT

Sept. 11-13, Workshop for Docket Clerks; Minneapolis, MN

Sept. 11-13, Management Training for Supervisors; Washington, DC

Sept. 11-15, Orientation Seminar for U.S. Probation Officers; Washington, DC

Sept. 21-22, Judicial Conference of the United States; Washington, DC

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## UPHEAVAL BARS BOLIVIA, U.S. PRISONER TRANSFER

The exchange of prisoners between Bolivia and the U.S., reported in the July issue of *The Third Branch*, did not take place as scheduled. A coup d'état in Bolivia upset exchange plans and no further negotiations on the matter will be held until the situation is stabilized.

# PERSONNEL

## Appointments

Mary Johnson Lowe, U.S. District Judge, S.D. NY, July 2

Shane Devine, U.S. District Judge, D. NH, July 18.

## Nominations

James Dickson Phillips, Jr., U.S. Circuit Judge, (CA-4), July 2

Patricia J. E. Boyle, U.S. District Judge, E.D. MI, July 25

Harry E. Claiborne, U.S. District Judge, D. NV, July 25

Julian A. Cook, Jr., U.S. District Judge, E.D. MI, July 25

Norma Levy Shapiro, U.S. District Judge, E.D. PA, August 3

Thomas A. Wiseman, Jr., U.S. District Judge, M.D. T, August 1

Theodore McMillian, U.S. Circuit Judge, CA-8, August 3

Marina R. Pfaelzer, U.S. District Judge, C.D. CA, August 8

## Confirmations

Jose A. Gonzalez, Jr., U.S. District Judge, S.D. FL, July 2

Edward S. Smith, Associate Judge, U.S. Court of Claims, July 26

## Deaths

John L. Miller, U.S. Senior District Judge, W.D. PA, July 20

Thomas F. Croake, U.S. Senior District Judge, S.D. NY, July 21

Joseph C. Waddy, U.S. District Judge, D.C., August 1

Austin L. Stanley, U.S. Senior Circuit Judge, (CA-3), August 3

THE THIRD BRANCH  
VOL. 10, No. 8 AUGUST 1978

## THE FEDERAL JUDICIAL CENTER

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SEPTEMBER, 1978



Photograph courtesy of Madden's Resorts, Beverly Vanzo, Photographer.

Addressing the Eighth Circuit Judicial Conference (left to right) Chief Justice Robert Sherman (Minn.); FBI Director William H. Webster; Mr. Justice Blackmun (U.S. Supreme Court); Judge Floyd R. Gibson (CA-8); Chief Judge Edward J. Devitt (D. Minn.); and Chief Judge J.P. Morgan (Sup. Ct. Mo.).

## MR. JUSTICE BLACKMUN, SENATE, HOUSE LEADERS ADDRESS EIGHTH CIRCUIT JUDICIAL CONFERENCE

ainerd, Minnesota was the this year for the Eighth Circuit's Judicial Conference, which brought to the gathering number of distinguished speakers.

Invited to address the Eighth Circuit's annual meeting were luminaries as Senator Dennis DeConcini and Congressman Harold Volkmer, both members of their respective Judiciary Committees, Attorney General Griffin Bell, and FBI Director William Webster (a former Judge in the Eighth Circuit).

Of special interest was the Supreme Court review given by the Eighth Circuit Justice, Mr. Justice Blackmun. The Justice had

words of commendation for the judges of the Eighth and he told them that their record of disposition of cases was one of the best in the system. Also praised was the low percentage of cases going to the U.S. Supreme Court for review, only seven percent of that Court's workload last Term. Nine percent is considered an average.

Both Senator DeConcini (D. Ariz.) and Congressman Volkmer (D. Mo.) gave detailed reports on the activities in the Senate and House Judiciary Committees, with special references to the omnibus judgeship bills pending in both houses.

(See CONFERENCE, page 5)

## JUDGESHIP BILL CLEARS CONFERENCE COMMITTEE

Twenty-three weeks after commencing its efforts to reconcile the Senate and House versions of the Omnibus Judgeship Bill, the House-Senate Conference Committee completed its work on September 20. The meeting, the conference's seventh since April 11, lasted only 20 minutes.

When the Senate passed its bill (S. 11) on May 24, 1977, it approved the creation of two circuits within the existing Fifth Circuit. When the House passed its bill (H.R. 7843) on February 7, 1978, the "Fifth Circuit Split" was never considered.

In five meetings held between April 11 and May 17 the conference committee successfully resolved twenty of twenty-three differences between the two bills. Among the three remaining differences the most difficult was "the Fifth Circuit issue." The conference had agreed not to act upon a Senate provision requiring the Ninth Circuit to "report back" to Congress with realignment recommendations until after the Fifth Circuit matter had been resolved, and a Senate provision concerning jurisdictional amounts applicable to freight damage cases had also been deferred.

In a sixth committee meeting on July 26 efforts focused upon resolution of "the Fifth Circuit issue" without success. During the seventh meeting on

(See JUDGESHIP, page 3)



MAJOR LEGISLATION OF INTEREST TO *THE THIRD BRANCH* READERS

## 95th CONGRESS, SECOND SESSION

Bill	House Status	Senate Status
Omnibus Judgeship Bill (H.R. 7843, S. 11)	Passed 2/7/78	Passed 5/24/77
	(See related story, page 1.)	
Diversity Jurisdiction Abolition (H.R. 9622, S. 2389, S. 2094)	Passed H.R. 9622, amended, 2/28/78	Judiciary Subcommittee completed hearings, 9/25/78
Abolition of Mandatory Supreme Court Jurisdiction (S. 3100, H.R. 12979)	Pending in Judiciary Subcommittee	Pending on Senate Calendar
Magistrates Jurisdiction Act (H.R. 7493, S. 1613)	Judiciary Committee reported S. 1613, amended, 7/17/78	Passed S. 1613, amended, 7/22/77
Jury Reform Legislation (S. 2075)	Reported to Judiciary Committee, 7/26/78	Passed S. 2075, amended, 4/26/78
Bankruptcy Reform Act (H.R. 8200, S. 2266)	Passed H.R. 8200, amended, 2/1/78	Passed S. 2266, 9/7/78
	Now in conference	
Judicial Tenure Act (S. 1423, H.R. 1850, 9042)	Pending in Judiciary Subcommittee	Passed S. 1423, 9/7/78
Omnibus District Court Re- organization (H.R. 13331, S. 3375)	Judiciary Committee reported H.R. 13331, 8/8/78	Passed S. 3375, 9/6/78

The Ninety-Fifth Congress is rapidly running out of time. The date now planned for adjournment *sine die* is October 14. Because there are so few business days within which to complete action on several hundred pending bills, many will not be enacted.

Several bills pending in this Congress of importance to the federal judiciary are close to final approval, and may be in a posture to warrant the expenditure of valuable floor time.

Although the Abolition of Diversity Jurisdiction Bill is pending before the Senate Judiciary Committee, no recommendation for approval has come from Senator DeConcini's Subcommittee which has deadlocked 2 to 2. If a full committee vote can be arranged in early September,

the bill may be sent to the floor with committee approval.

The Abolition of Mandatory Supreme Court Jurisdiction Bill which will allow the Supreme Court greater discretion in selecting cases it will review, is now pending on the Senate calendar. Senator Helms (Rep. NC) has threatened to move an amendment to this bill prohibiting the Supreme Court from exercising any jurisdiction over school prayer cases. The bill may pass in early September—if it does not contain the school prayer amendment. When the matter reaches the House floor, anticipated amendments concerning abortion, school prayer, and school desegregation may delay or prevent passage.

The Magistrates Jurisdiction

Act, enlarging the civil and criminal jurisdiction of U.S. Magistrates, and jury reform legislation, providing for a civil penalty and injunctive relief in the event of threatened discharge of an employee because of federal jury service have been passed by the Senate. Although no vote has been scheduled by the House, passage of both is expected in September.

Passage of the Senate version of the Bankruptcy Reform Act—which does not establish a separate court system—occurred on September 7. Differences between the House and Senate versions of the bill may cause delay in the Conference Committee. Both bills establish a uniform law on the subject of bankruptcies.

(See LEGISLATION, page 3)



## SUPREME COURT TO CONFER EARLY TO MEET HEAVY CASELOAD

When The Chief Justice convenes the Supreme Court on the first Monday in October, as mandated by statute, the Court will also announce orders in approximately 1,000 cases. Arguments in cases set for the October Term, 1978 will immediately follow.

During the weeks of adjournment, which began July 3, each member of the Court has received papers in an average of 105 cases per week. As of September 1 this has brought the total number to 950. The Clerk's office estimates over 100 more will be ready for consideration, bringing the aggregate to well over 1,000.

To keep abreast of the heavy caseload, the Court will be following some new procedures this Term. In the past and immediately following the opening of the October Term, a

series of conferences were held to consider and vote on the cases which have accumulated since they last met. Following that argument was heard.

This Term, daily conferences will be held beginning the week of September 25. At these conferences the Justices will discuss and vote on cases ready for consideration, estimated to number 1,055. Those cases which present appropriate issues will be placed on the Court's argument calendar to be argued later in the Term, as new briefs on the merits are filed. Of the remaining cases, review is either declined, or summarily reversed with appropriate instructions to the courts below.

With the exception of some cases which may be withheld for further research or special consideration, orders will be announced on October 2nd in the balance of the cases and arguments will start immediately.

## LEGISLATION from page 2

Although the Judicial Tenure Act passed in the Senate on September 7, due to the surprisingly close vote of 43 to 31, the House will probably not act upon it this year. The bill would establish a Council on Judicial Tenure in the judicial branch of the Government, and a procedure in addition to impeachment for the retirement of disabled justices and judges.

Final passage of the Omnibus District Court "reorganization" bill is anticipated during September. Identical "combination bills" make changes in the places of holding federal district court, in the divisions within judicial districts and in judicial district dividing lines. The Senate bill was passed on August 21.

## JUDGESHIP BILL from page 1

September 20, however, all conferees unanimously agreed to adopt the following language in lieu of the Senate-passed bill's sections requiring realignment of the Fifth Circuit and the "report back" from the Ninth:

"Any court of appeals having more than 15 active judges may constitute itself into administrative units complete with such facilities and staff as may be prescribed by the Administrative Office of the United States Courts, and may perform its *en banc* functions by such number of members of its *en banc* courts as may be prescribed by rule of the court of appeals."

Remaining issues in disagreement were resolved immediately, and twenty minutes after the meeting commenced the conferees affixed their signatures to conference report authorizations.

A conference committee report should be filed with both

## FJC BOARD APPROVES COURSES FOR FEDERAL JUDGES AT HARVARD

At its August meeting the Board of the Federal Judicial Center approved, on an experimental basis, a new educational program for federal judges. The program would provide tuition, travel, and per diem expenses for federal judges at Harvard Law School's summer "Program of Instruction for Lawyers." A maximum of ten judges will be supported for a two-week period starting July 16.

The program, which has been offered by the Law School since 1953, provides concentrated instruction by members of the Harvard faculty. Among the subjects being covered, some in one week and some for two weeks, are: Antitrust, federal jurisdiction, securities regulation, labor management relations, corporate income tax, administrative law, comparative law, Soviet law, critical choices in constitutional theory, and statutes and their interpretation. In addition, there will be a few special afternoon programs.

Normally these programs include three hours of morning lectures in two courses, six days a week, the equivalent of thirty-six semester hours. There will be ample opportunity for colloquia and informal discussions. Louis Loss, Cromwell Professor of Law, directs the summer program.

(See HARVARD page 7)

houses by the first week in October, and floor votes necessary for final enactment are anticipated during that week.

The number of judgeships remains the same — 117 for the district courts and 35 for the circuit courts. However, since the next session of Congress will convene next January it will be several months until these new positions can be filled.





## FEDERAL COURT LIBRARY REPORT RELEASED

*Improving the Federal Court Library System*, a report examining the system that supplies federal judges with law books and legal information services, has been released by the Federal Judicial Center. The report, submitted earlier this year by the Board of the Center to the Judicial Conference of the United States, is the result of an eighteen-month study of the libraries of the federal courts—the world's largest law book collection.

Five main problem areas in the system are identified in the report:

- Management
- Budgeting and procurement
- Personnel
- Library use and facilities
- Future planning and policy

The report found that solutions to these problems may be found in the adoption and application of sound management principles to law book and law library management. The nineteen specific recommendations approved by the Judicial Conference are that:

- The position of director of federal court libraries be established within the Administrative Office
- Circuit librarians be charged with the responsibility to propose to the Circuit Executive a circuit-wide library budget, to inventory all law books in the circuit, and to make periodic reports to the federal court library director
- The Administrative Office establish and maintain a computerized inventory of all federal court library holdings
- That law books and other expenses directly attributable to maintenance and support of federal court library holdings receive a definite amount of funding, specified in the Administrative Office Budget.
- Individual circuit library budgets be allocated

- Each federal judge have available a relatively small but definite amount of local discretionary funds to purchase, directly from vendors, law books for official use

- That the Administrative Office develop an efficient procurement procedure that minimizes delay, assures continuation of needed services and supplements, and assures awareness of forthcoming publications of interest to the federal courts.

- Court of Appeals librarian positions be upgraded

- The position of librarian be established for district court libraries and central libraries; that in district courts not requiring a central library an appropriate person be designated to take responsibility for all law books in the district

- There be developed continuing education programs for court librarians

- That the artificial distinction that exists between the circuit and district courts regarding the establishment, maintenance, and staffing of central libraries be eliminated

- Experimentation with satellite librarians be continued and extended to other parts of the country

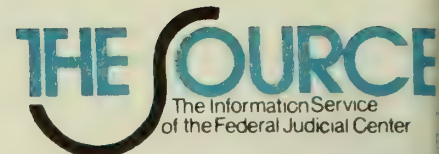
- That the Administrative Office furnish court of appeals and district court central libraries with at least the legal research material that is necessary to insure compatibility with those minimum standards that the Judicial Conference approves

- Minimum library holdings be furnished court of appeals and district court central libraries

- Minimum library holdings be furnished in the chambers of each court of appeals judge, district judge, magistrate and bankruptcy judge at each individual's official duty station

- A system for withdrawing and redistributing surplus holdings be established

- The Administrative Office



Beyond Mere Competence. A Leo Levin. 1977 Brigham Young U.L. Rev. 997-1006.

European Alternatives 1 Criminal Trials: What We Can Learn. William L.F. Felstiner. Ann Barthelmes Drew. 1 Judges' J. 18-24+ (Sept. 1978)

The Impact of the New Copyright Act on Photocopying by Law Firms and Law Libraries Ralph Artigliere. 52 Fla. B. 528-35 (July/Aug. 1978).

Legislative Issues in Criminal Control. Institute of Government, University of Georgia 1978.

Modern Discovery: Promoting Efficient Use and Preventing Abuse of Discovery in the Roscoe Pound Tradition William H. Becker. 78 FRD 2678 (July 1978).

Parole Guidelines Confuse Sentencing Process. Herbert Miller & Jamie S. Gorelick. Legal Times of Washington Aug. 28, 1978, at 9, col. 1.

establish formal and continuing liaison with GSA to provide architectural guidance

- A continuing program to eliminate unnecessary duplication of holdings be established

- That the Judicial Conference of the United States consider appointing a subcommittee of the Judicial Conference standing committee to oversee the operation of the federal court library system

- That the Administrative Office and the Federal Judicial Center cooperate in an ongoing program to monitor and assist the development, test the utility and recommend the implementation of new technologies and services in the legal research field.

Copies of the report may be obtained from the Information Service Office of the Federal Judicial Center.



# CONFERENCE from page 1

The Senator said that a viable legal system must have at least three elements. He identified these elements as:

Access to the courts. Society has performed better on paper than in practice. Our legal system is too expensive and time-consuming. The middle class and the poor should have the same opportunity to press their claims in our courts as do the rich, the corporations and the Government.

Courts must expedite cases, particularly civil cases. "Justice delayed is justice denied may be a trite, but it is true." He criticized especially the trials in civil cases and said if justice is not expeditious, it is not effective.

The quality of justice. Quality reflects more than the caliber of the individual we place on the bench. The best of judges must balance the time and effort he or she can devote to a case against the court's backlog. We can materially affect the quality of justice by changing the structure of the system.

Regarding the judgeship bill, the Senator made no definite commitments, but did make it clear that he was supportive and sympathetic to the needs of the judiciary. He added a personal observation: that the need could have been advanced by everyone involved in the process as vigorously eight years ago as it is today.

Congressman Volkmer referred in his remarks to his belief that there is a need to supply more "flexibility" to the legal system. He evidenced a special interest in the magistrates bill, and the bankruptcy bill and though he was noncommittal on just when a judgeship bill might come out of Congress, he was optimistic good progress very soon. He agreed with Senator DeConcini that the appointments should be based on merit.

There was good representation from the Committee to Establish Standards for Admission to Practice in the Federal Courts. Chief Judge J. Edward Devitt, (D. Minn.), Chairman, had with him to report on the progress of this Committee Judge James Lawrence King (S.D. Fla.) and two lawyer-members, Thomas E. Deacy, Jr. of Kansas City and Henry Halladay from Minneapolis. Chief Judge Devitt will make a formal report to the Judicial Conference of the United States when it meets in Washington this month.

Attorney General Bell reported on legislation affecting the federal courts, including the Foreign Intelligence Surveillance Act, the proposed criminal code, arbitration and diversity jurisdiction.

Dean Paul Carrington, now at Duke Law School, presented an interesting and very perceptive paper on the United States Courts of Appeals—their work, new developments in appellate procedures over the past fifteen years, and his analysis of why and how changes have come about.

An especially welcome speaker was FBI Director William H. Webster. Judge Webster not only spoke to them as a high Government official and former colleague; he spoke to them as a judge who understood their heavy caseloads and the problems which accompany heavy filings. Aware of their concerns for all aspects of his work, he reassured them that actions in particularly sensitive areas would have his "personal review."

Judge Robert Van Pelt (D. Neb.), as he has done in previous years, presented a scholarly and very helpful review of Eighth Circuit Evidence opinions.

Papers and speeches distributed at the Conference, including new local rules, are available in the FJC Information Service Office.

## JUDGES MARVIN FRANKEL AND JOSEPH MORRIS ANNOUNCE RESIGNATIONS

Judge Marvin E. Frankel announced on August 16, that he would resign from the U.S. District Court for the Southern District of New York, effective September 30, 1978. Judge Frankel was appointed to the position by President Johnson on October 21, 1965. His decision was based upon his desire for the challenge and interest of a new position and the ability to become involved in human rights activities. He will return to private practice.

Judge Frankel is one of the most widely-known members of the federal judiciary and has written extensively on the problems of sentencing. He was a member of the Federal Judicial Center's Board from 1972 until 1978.

After graduating from Columbia University School of Law in 1948, Judge Frankel became a Government attorney working as an assistant to the Solicitor General. He was in private practice from 1956 until 1962 when he joined the faculty of Columbia University School of Law.

Judge Morris came to the U.S. District Court for the Eastern District of Oklahoma in 1974 and became Chief Judge of that court in 1975. His prelaw and J.D. degrees were from Washburn University and he earned both LL.M. and S.J.D. degrees at the University of Michigan.

In announcing his resignation, which became effective August 1, the Judge said it was a very difficult decision to make, but that he found it even more difficult to turn down a very attractive and professionally challenging offer. Judge Morris is now Vice President and General Counsel of a major oil company in Houston.





## ABA HOUSE OF DELEGATES ADOPTS RESOLUTIONS ON COURTS

At last month's meeting of the American Bar Association the House of Delegates took action on a number of resolutions pertaining to the courts—state and federal.

In one of its most sweeping actions, after a brief but heated debate, the House passed by voice vote a resolution which revised the Criminal Justice Standards. The one resolution contained nine parts relating to standards for trial by jury, speedy trial, the function of the trial judge, electronic surveillance, criminal appeals, appellate review of sentences, post conviction remedies, discovery and procedure before trial, and joinder and severance. The House's approval is partial completion of an exhaustive study and revision of criminal justice standards which were previously adopted by the House, some as far back as ten years ago. Many judges in the federal system served on ABA committees which drafted the original and the new revised standards.

Separately the House took up the report on Fair Trial and Free Press. Judge Alfred T. Goodwin (CA-9) is Chairman of the Task Force which drafted this report. Though the report was approved, there was excised from the report that portion which pertains to the use of cameras in the courtroom, which will probably be taken up next February at the Association's mid-year meeting.

Eight other revised standards for criminal justice are expected to be taken up at the mid-year meeting next February.

Of interest to the federal judiciary also were actions which: Disapproved a resolution to support federal legislation to fund an income tax audit assistance program to offer advice, assistance and

representation to low-income taxpayers; deferred action on an amendment to the Code of Judicial Conduct which would permit a judge to serve as a director or an officer of a business wholly owned by members of a judge's family; and approved a resolution to support continuation of affirmative action programs in law school admissions and legal hiring practices.

The House also supported the enactment of comprehensive legislation to revise the procedural and substantive law of bankruptcy as proposed in Title 1 of H.R. 8200 and S. 2266.

The House took action also on a recommendation offered by the Judicial Administration Division. Approved was a Model Judicial Article for the states, a product of the Committee to Implement the Standards of Judicial Administration.

Included in the standards are guidelines for appointment to the bench and conduct while holding office, as well as for the removal or suspension of judges in cases of misconduct or disability.

The Division's second recommendation was defeated. This resolution sought support in principle, for enactment of legislation establishing broad guidelines for the use of mandatory, non-binding arbitration in a limited number of U.S. district courts for a three year experimental period. Opposition to the proposal came from the Section on Insurance Negligence and Compensation Law, their argument being that because arbitration would be non-binding it would increase delay and at the same time offer no meaningful right of appeal. A resolution to oppose arbitration, however, was defeated.

### Eighth Circuit Conferences to be Restructured

## CHIEF JUDGE GIBSON REPORTS ON THE EIGHTH CIRCUIT

In his address opening the Eighth Circuit Judicial Conference, Chief Judge Floyd R. Gibson reported on the state of the business of the courts within the Circuit, articulated some of the problems accompanying heavy workloads, and introduced the new judges who have joined the Circuit since last they met.

Of particular interest was Chief Judge Gibson's references to the work of a special committee he appointed in the spring of 1977 to consider the restructuring of their annual conferences. The committee was constituted by appointments of a lawyer from each of the ten districts, two circuit judges and three district judges. What they were especially asked to address was whether they could in any way "more effectively conform to the congressional mandate embodied in 28 U.S.C. 333,"

which states that the Judicial Conference of each Circuit shall convene annually "for the purpose of considering the business of the courts and advising means of improving the administration of justice within each circuit."

The committee's report was adopted by the Judicial Council of the Circuit on April 13, 1978 and was distributed at the conference last month.

One of the main recommendations was that members of the bar have more active participation at the conference and that "members of the bar shall participate in planning and conducting the conferences." One section of the report establishes a Judicial Conference Advisory Committee and stipulates that this committee will "make recommendations with respect to annual programs and, where appropriate, assist the Conference in implementing





Chief Judge Gibson

programs, including those where legislative and executive action is required."

Chief Judge Gibson has appointed a committee of ten judges and lawyers—to begin implementation of the plan developed by the committee.

This action by the judges of the Eighth Circuit follows a recent trend to review and restructure the annual statutory conferences. In 1976 the Ninth Circuit released a 100-page report on their circuit conferences, a product of an eight-member committee appointed by Chief Judge Richard Chambers, and approved "in principle" by the Judicial Council of the Ninth Circuit. At the annual conference of the Third Circuit to be held next month there will be on their agenda proposed revision of their rules governing the structure of their conferences.

The FJC Information Service has very extensive files on the programs of all the circuit conferences, as well as all major addresses. Also available are the committee reports on restructuring the conferences.

#### REVERD from page 1

The Board regarded its approval of this program to be consistent with the Center's practice of providing specialized tuition aid to personnel in the Judicial Branch. It will be an extension of their policy to complement the Center's

## CLASS DAMAGE LEGISLATION INTRODUCED

A Department of Justice draft statute proposing revisions in class damage procedures was introduced in the Senate as S. 3475 on August 25.

The Department's bill is based on three major conclusions. First, more must be done to deter instances of pervasive small injury where it is not economically feasible to initiate individual actions. Second, where individual injury is more substantial (more than \$300) effective means of redress should be provided under procedures which avoid unnecessary escalation of expense. Third, the courts must be given the tools to manage both types of cases effectively. In short, this bill is an attempt to establish fair, balanced and effective class damage procedures in response to many of the plaintiff and defendant objections to the application of the existing Rule 23(b)(3).

Therefore, two different procedures are created subject to new management techniques designed to make them triable in a manner fair to both parties.

First, a public action for mass small injury would be created vesting a single claim in the United States against the wrongdoer. Cases meeting the procedural requirements become the exclusive mass remedy. Appropriateness of the lawsuit would be determined at a preliminary hearing which would strongly interject the judicial officer into the management of the action. As an incentive and to make it

financially worthwhile for the initiation of public actions by private persons (by notice on the Attorney General and the U.S. Attorney) costs and attorney's fees are awarded if the action is successful. If the plaintiff prevails, the defendant would pay the amount of the judgment into a special fund set up in the Administrative Office of the U.S. Courts. The Administrative Office would then handle individual claims.

Second, the bill would establish procedures for compensation for mass injury of substantial individual amounts. This provision would provide a new less cumbersome remedy where the injury inflicted exceeds \$300.

Both of the new procedures would be subject to new management techniques. These include:

- regulation of settlements with clear provisions for notice, participation by the United States in a public action, and judicial control

- elimination of motion practice on adequacy of representation issues with concomitant expansion of the judicial role

- mandatory transfer and consolidation by the multi-district panel where there are multiple actions to provide a single litigation of all matters arising out of the same transaction or occurrence

- supervision by the circuit judicial councils of overly-delayed district court rulings

- provisions for computing attorney fee awards based on hourly rates and more rational allowances for time and risk

[See related story in July issue, Vol. 10, No. 7, p. 7.]

regular seminars and workshops by supporting attendance at educational institutions when it is not cost effective for the Center to offer such courses. Heretofore, there have been relatively few opportunities for judges to take advantage of the

specialized tuition program.

Further details on the Harvard program are available on request. Interested federal judges should be in touch as soon as possible with Federal Judicial Center Director A. Leo Levin.



# DOJ calendar

## APPOINTMENTS

Alfred Laureta, U.S. District Judge, Mariana Islands, May 19  
Santiago E. Campos, U.S. District Judge, D. NM, July 12  
Edward S. Smith, Associate Judge, U.S. Court of Claims, July 28  
Jose A. Gonzalez, Jr., U.S. District Judge, S.D. FL, August 8  
Thomas A. Wiseman, Jr., U.S. District Judge, M.D. TN, August 11  
Louis H. Pollak, U.S. District Judge, E.D. PA, Sept. 8

## CONFIRMATIONS

James D. Phillips, Jr., U.S. Circuit Judge (CA-4), August 11  
Harry E. Claibourne, U.S. District Judge, NV, August 11  
Norma Levy Shapiro, U.S. District Judge, E.D. PA, August 11

## NOMINATIONS

Harold A. Baker, U.S. District Judge, E.D. IL, August 9  
Richard S. Arnold, U.S. District Judge, E. & W. AK, August 14  
Bruce S. Jenkins, U.S. District Judge, D. UT, August 28

## ELEVATION

Fredrick A. Dougherty, Chief Judge, U.S. District Court, E.D. OK, August 1

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Federal Judicial Center  
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Eastern District of Virginia  
Director Emeritus

## RESIGNATION

Joseph W. Morris, Chief Judge,  
U.S. District Court, E.D. OK,  
August 1

## DEATHS

Austin L. Staley, U.S. Senior  
Circuit Judge (CA-3), August  
3  
Phillip Foreman, U.S. Senior  
Circuit Judge (CA-3) August  
17  
Frank Gray, Jr., U.S. Senior  
District Judge, M.D. TN,  
Sept. 9

# PERSONNEL

Sept. 18-20 Management  
Training for Supervisors  
Dallas, TX  
Sept. 20-22 Seminar for  
Bankruptcy Clerks, Los  
Angeles, CA  
Sept. 21-22 Judicial Confer-  
ence of the United States,  
Washington, DC  
Sept. 23-24 Seminar for Court  
Reporters, Louisville, KY  
Sept. 26-29 Employment  
Placement Workshop for  
Probation Officers, Washing-  
ton, DC  
Oct. 2-4 Sentencing Institute  
(Eighth and Tenth Circuits)  
Denver, CO  
Oct. 4-6 Management Training  
for Supervisors, Seattle, WA  
Oct. 5-6 Conference of Metro-  
politan Chief Judges  
Williamsburg, VA  
Oct. 12-13 Workshop for  
District Judges (Seventh  
Circuit), Chicago, IL  
Oct. 19 Judicial Conference  
Appellate Rules Committee  
Washington, DC  
Oct. 21-22 Seminar for Court  
Reporters, Salt Lake City, UT  
Oct. 23-25 Management  
Training for Supervisors  
Baton Rouge, LA  
Oct. 23-26 Third Circuit  
Judicial Conference, St.  
Thomas, V.I.  
Oct. 30-Nov. 1 Seminar for  
Circuit Court Clerks, St. Louis  
MO  
Jan. 17-19, 1979 Conference  
of Federal Appellate Judges  
Los Angeles, CA

THE THIRD BRANCH  
VOL. 10, No. 9 SEPTEMBER 1978

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OCTOBER, 1978

## HOUSE, SENATE, PASS OMNIBUS JUDGESHIP BILL

After deliberating for more than 17 months, the 95th Congress has passed the Omnibus Judgeship Bill. Final action came in the House of Representatives on October 4, and in the Senate on October 8. Reconciliation of the House and Senate versions of the bill on September 20 was reported in last month's issue of *The Third Branch*.

In September 1972, the Judicial Conference approved the sending of its Quadrennial Survey of Judgeship Needs and authorized their transmittal to Congress. An appropriate draft "Omnibus Judgeship Bill" was filed with both the House and Senate on the first day of the 93rd Congress, January 3, 1973.

On January 29, that draft bill was introduced as S.597, 93rd Congress, a bill to create 51 additional judgeships. That bill died of passage. A successor bill, S.287, was reintroduced in the 94th Congress. It too failed passage on adjournment sine die on October 20, 1976.

Almost simultaneously, the Judicial Conference approved the transmittal to Congress the findings of its 1976 Quadrennial Survey. That draft legislation was transmitted to Congress on February 7, 1977. The late Senator John L. McClellan (D.-N.J.) introduced the draft bill on February 10, 1977.

See JUDGESHIPS page 3



Chief Judges in the federal court system met at the Supreme Court September 20 in conjunction with the meeting of the Judicial Conference of the United States. Chief Judges pictured from left, Collins J. Seitz (CA-3), Skelly Wright (CA-DC), Floyd R. Gibson (CA-8), Harry Phillips (CA-6), Howard T. Markey (CCPA), John R. Brown (CA-5), Frank M. Coffin (CA-1), Daniel Friedman (Ct. Claims), Irving R. Kaufman (CA-2), Thomas E. Fairchild (CA-7), Clement F. Haynsworth, Jr. (CA-4), Oliver Seth (CA-10). Not available at time photograph was taken: Chief Judge James R. Browning (CA-9).

## METROPOLITAN CHIEF JUDGES HOLD SEMI-ANNUAL MEETING

Juries, antitrust, improving trial advocacy in the federal courts, and "flex-time" were topics which dominated the semi-annual meeting of the Conference of Metropolitan District Chief Judges on October 4-6 in Williamsburg, Virginia.

The Conference provides the chief judges of the larger federal district courts with an opportunity to stay abreast of developments of particular interest to their courts. It is intended to focus on the problems of the chief judges and to allow for an exchange of views among the participants. The Federal Judicial Center sponsors the Con-

ference. The Center's Director Emeritus, Senior Judge Walter E. Hoffman (E.D. Va.) is the Conference Chairman. Joseph L. Ebersole, Deputy Director of the Center, serves as Secretary.

The role and the utilization of the jury in federal courts was a major topic of discussion. There was a presentation by Professors Veda and Robert Charrow, explaining the implications of their research on the comprehensibility of jury instructions. On a related but more operational level, the Met Chiefs had the opportunity to exchange information on their courts'

See METROPOLITAN page 6



## Reaffirms Support in Principle

### JUDICIAL CONFERENCE CALLS FOR CHANGES IN JUDICIAL TENURE BILL

Last March, the Judicial Conference of the United States, responding to a Congressional request, expressed the Conference's views on three pending proposals relating to tenure and removal of federal judges. These proposals were embodied in three bills: H.R. 9042, H.R. 9451, and S. 1423.

The statement issued by the Conference reads in part:

"Among the proposals currently pending in Congress, establishing methods for dealing with judicial conduct and disability, the Judicial Conference approved in principle the objectives of S. 1423, as embodied in the 'committee print' of February 3, 1978.

"While fully cognizant of the Constitutional powers vested in the Congress and the Conference's obligation to respect those powers, in responding to Congressional requests for views on those bills, the Conference also believes it is obligated to express its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"Aside from the reservation expressed on the constitutionality of the removal feature, the Conference concludes that legislation placing authority in the Judicial Branch itself is both compatible with long-standing concepts of separation of powers and desirable in terms of maintaining the ultimate objective of an independent judiciary worthy of public confidence.

"We believe that S. 1423 should be altered in some respects. For example, we would recommend that subsection (c)(1) of proposed section 383 be amended to provide

authority for a panel established by proposed section 382 to itself dismiss a complaint, in addition to recommending dismissal or further investigation. Further, we believe that S. 1423 should expressly reaffirm the authority of the judicial councils of the circuits to deal with inappropriate judicial conduct by formal or informal action, and suggest that this might be accomplished by allowing the circuit a reasonable period of time to act with respect to any complaint before that complaint is referred to the circuit panel pursuant to section 382 of S. 1423. Other changes not incompatible with the objectives of S. 1423 may be proposed."

Because it appeared the Conference's views on S. 1423 were misunderstood, the Conference again reaffirmed its position with the following resolution adopted by that body on September 22, 1978:

"The action of the Judicial Conference concerning S. 1423, 95th Congress, has been widely misunderstood and the Conference hereby reaffirms its genuine concern that enactment of any bill authorizing removal of a judge from office by a method other than impeachment will raise the fundamental question of the Act's constitutionality.

"The Conference expresses its disapproval of any legislative provision which purports to delegate to any tribunal or entity the constitutional power of Congress to remove a federal judge from Office."

An additional resolution directed the Conference's Committee on Court Administration to conduct a study "to determine whether legislation is necessary to clarify the power of the

Judicial Councils of the Circuits to adopt procedures for the examination of judicial conduct in cases where it is warranted and to take appropriate action with respect to such instances.

This Committee, one of the largest and most prestigious, was instructed to report the results of their study at the next meeting of the Judicial Conference which will be held next March. The purpose of the second resolution is obviously to recommend proposals which might be necessary to set up procedures which would make possible for the Judicial Branch to deal with judicial misbehavior through revisions of existing administrative machinery.

Since 1940 the Conference has approved five statements related to legislative proposals similar to the pending Senate bill, S. 1423. In every instance the Conference has consistently sought, in the context of evaluating specific legislative proposals, to convey three principal beliefs:

(1) The belief that more efficient and effective methods for resolving problems associated with alleged judicial misconduct would promote the ultimate objective of an independent judiciary worthy of public confidence;

(2) The belief that correct authority would best be vested in the Judicial Branch itself in recognition of long-standing separation of powers concepts and

(3) The belief that any authorization of a "power of removal" applicable to federal judges by any institution other than the Congress would, perhaps unnecessarily, but surely inevitably, raise the fundamental constitutional question of the scope of the impeachment power vested in Congress.



## COMMITTEE ON STANDARDS FOR ADMISSION REPORTS TO JUDICIAL CONFERENCE



Patricia A. Thomas

### PATRICIA THOMAS APPOINTED CHIEF, LIBRARY SERVICES BRANCH

The appointment of Patricia Thomas as Chief of the Library Services Branch was announced by the Administrative Office September 11. The position, which is within the Administrative Services Division, was created in response to a recommendation made in the recently released report, *Improving the Federal Court Library System*. The recommendations made in the report were approved by the Judicial Conference in March, 1978.

Ms. Thomas' first plans focus on travel to each of the circuits to observe the operation of the circuit courts and their libraries, learn of existing library problems and to become acquainted with library staff throughout the country. She plans to complete her tour before a librarians seminar to be held in Washington in the Spring of 1979.

A native of Rocky River, Ohio, Ms. Thomas graduated from Case Western Reserve University in 1949 with an A.B. in political science, history and economics. She received her M.D. from Case Western in 1951, and was admitted to the Ohio Bar the same year. Before her appointment as Chief, Library Services Branch, she was head librarian at the Internal Revenue Service.

A committee of the Judicial Conference of the United States on September 22 released a report and recommendations on standards for admission to practice in the federal district courts. The proposals set out in the report are based on approximately two years of study and public hearings.

The Judicial Conference Committee report tentatively proposes two basic standards, one involving knowledge of federal legal practice and the other involving actual trial experience. Lawyers desiring to practice in federal district courts would be required to undergo an examination to demonstrate knowledge of federal jurisdic-

tion, Federal Rules of Procedure, Federal Rules of Evidence, and the Code of Professional Responsibility—an examination which may be part of the multi-state bar examination presently administered in about forty states.

The Committee also recommends that an applicant for admission to federal trial practice be required to have been involved in at least four trial experiences, two of which must be in actual cases in either a state or federal court working with experienced trial lawyers. The other experiences may be participation in simulated trials in law schools, or supervised

See STANDARDS page 7

### JUDGESHIP from page 1

The final version of the bill provides for 152 new judgeships, 117 for the district courts, and 35 for the circuit courts. District court judgeships authorized in the bill are identical to those of the House version reported in the February 1978 issue of *The Third Branch* with the exception of an additional eight added in the conference agreement as shown below. (A district court judgeship proposed in the House version for Wyoming was deleted by the conferees.)

District	Added by House	Added Under Conference Agreement
Arizona	2	3
Florida		
Northern	0	1
Georgia		
Northern	4	5
Indiana		
Southern	0	1
Louisiana		
Eastern	3	4
Massachusetts	3	4
Puerto Rico	3	4
Texas Southern	4	5

Nominations from the President are expected shortly after the 96th Congress

convenes on January 3, 1979, and Attorney General Bell has already said that he is geared up to process the nominees. In addition, the American Bar Association, which investigates and rates all nominees, has already announced they are prepared to act immediately, possibly by working through two committees.

### SURVEY OF DISCOVERY LITERATURE AVAILABLE

*Survey of the Literature on Discovery from 1970 to the Present: Expressed Dissatisfaction and Proposed Reforms*, authored by Professor Daniel Segal of the University of Pennsylvania Law School for the Federal Judicial Center, is available from the Center's Information Service Office.

The report is a survey of the literature on discovery rules since the last major revision of the discovery provisions of the Federal Rules of Civil Procedure.



## SECOND CIRCUIT CONFERENCE HELD

Over 600 federal judges, law school deans, law professors, and private practitioners from New York, Connecticut and Vermont, along with high level federal officials and well-known mental health experts, convened at the annual Second Circuit Judicial Conference held September 7-9 in Buck Hill Falls, Pennsylvania.

The theme of the Conference this year was "Psychiatry and the Law"—one of the first efforts of the bench and bar and the psychiatric profession to reconcile the "wisdom and demands of these two divergent spheres of thought and action."

Well-known psychiatrists, professors and lawyers participated as panelists at the Conference examining these questions:

- Do present tests and procedures for commitment make sense?
- Should involuntarily committed patients have rights to receive or refuse treatment?
- Is it time to abolish the insanity defense?
- Should permanently incompetent defendants be tried?

In his "state of the Circuit" address opening the Conference, Chief Judge Irving R. Kaufman noted progress made in implementing the work of earlier conferences, and steps taken by the Circuit to improve the administration of justice:

- The report of the Clare Committee, appointed by Chief Judge Kaufman over five years ago to study the quality of advocacy in the Circuit, has resulted in greater attention to the need for "on-the-job" training of advocates.
- The work of the Commission on the Reduction of Burdens and Costs in Civil Litigation — inspired by last year's conference to deal with the demands made by massive discovery and repeated motions and counter-motions upon the parties and

the courts — has resulted in a voluntary masters project in the Southern District of New York. The master, a highly qualified trial lawyer, will assist parties in clarifying and narrowing the issues presented by a dispute.

- Employment by the Circuit of the English practice of deciding appeals by oral opinion delivered from the bench when disputes present relatively simple issues or do not "break new legal ground."

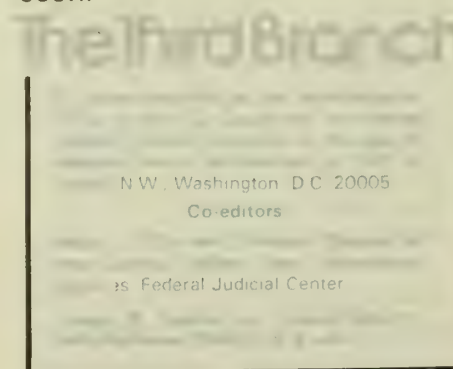
- Adoption, on an experimental basis, of a so-called "letter-brief" program in which the court relies on a ten-page letter and the appeal heard on the full original record in relatively uncomplicated, single-issue civil appeals.

Chief Judge Kaufman also reviewed the performance of the courts in the Circuit.

For the fifth consecutive year, and for the seventh time in the past eight years, more cases than were filed were terminated in the Court of Appeals.

District courts in the Circuit cleared their criminal calendars for the fifth consecutive year. The Southern and Western Districts of New York and the District of Vermont cleared their civil calendars as well.

In the address, Chief Judge Kaufman proposed creation of a "five year plan" to blueprint the improvements needed in the district courts to eradicate backlog and delay. A committee composed of judges of the district courts and members of the trial bar to work on the proposed blueprint and establish goals and plans, is to be appointed soon.



## BICENTENNIAL FILMS SUCCESSFULLY LAUNCHED

The film series, "Equal Justice Under Law," produced as Bicentennial project of the Judicial Conference, is enjoying a successful run as evidenced by a growing list of viewers. The exact number of people who have seen the films will never be known, but reports received to date from Chief Judge Howard T. Markey (C.C.P.A.), make 2,000,000 a conservative estimate.

Narrated by E. G. Marshall, the five films dramatically portray the factual backgrounds, as well as public and court debate on the issues in *Marbury v. Madison*, *McCulloch v. Maryland*, *Gibbons v. Ogden* and the trial of Aaron Burr (two films).

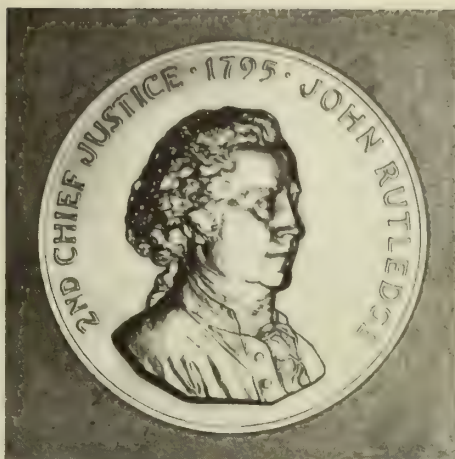
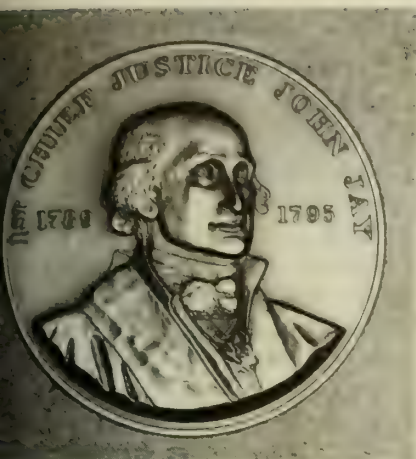
Critical audiences, including justices, judges, lawyers, and educators, have been enthusiastic in their praise of the films as have members of the general public.

Audiences have been diverse and widespread. Thus far, the films have been shown a number of times on the Public Broadcasting System, and at hundreds of high schools, colleges, and law schools where with accompanying teacher's guide, they have been well received as teaching tools. They have been shown, and used as part of regular courses in the four Military Academies. A set has been acquired by the International Communication Agency with plans to make the films available to all overseas posts as part of their cultural programs. The Smithsonian is showing the films to enthusiastic tourist groups. The series has served as part of a lecture program at the Salzburg Seminar and has been shown at the Inn of Court in London. A number of Circuit Judicial Conference have shown one or more of the films at their Judicial Conferences.

The foregoing is a partial list

See BICENTENNIAL page





### U.S. MINT COMPLETES ADDITIONAL MEDALS IN CHIEF JUSTICE SERIES

The U.S. Mint has announced the completion of the Chief Justice John Rutledge Medal and the Chief Justice Earl Warren Medal in the Commemorative Medals Series honoring the Chief Justices of the United States. The obverse side of each medal bears the likeness of the Chief Justice while the reverse side bears the seal of the Supreme Court of the United States. The three inch bronze medals, which may be purchased from the Mint, are also made available from the Supreme Court Historical Society.

The completion of the Chief Justice Rutledge and Chief Justice Warren medals brings the total number of completed medals in the series to four. The Chief Justice John Jay and Chief Justice Warren E. Burger medals have been available for some time. All are available through the Supreme Court Historical Society.

## UNIFORM REPORTING DISCIPLINARY ACTIONS RECOMMENDED

In 1967 the President of the American Bar Association constituted a committee to study and evaluate disciplinary procedures in the United States. The late Mr. Justice Clark, just retired from the U.S. Supreme Court, was appointed Chairman. Three years later the committee members reported their findings and recommendations in a comprehensive report.

One recommendation was the establishment of a central office to receive and keep accurate records of disciplinary proceedings in all courts, state and federal. Carrying out this proposal, the ABA moved quickly and set up a national discipline data bank. All states now report the names of lawyers censured, suspended or disbarred, and participating

courts are eligible to receive information from the data bank. It cured a major criticism recited in the report—that lawyers who had been disbarred in one state could easily move into another state and practice law without disclosing their prior record.

While some federal courts report to this data bank, there are many that do not. Mindful of this, the Chief Justice recently wrote the Chief Judges in the non-participating courts and urged that they commence reporting their disciplinary actions. Included in the Chief Justice's letter is the observation that "...the integrity of our profession would be enhanced by a uniform reporting of all attorney disciplinary actions. When an attorney is disciplined in one jurisdiction every court in

the system should have access to this information."

So far over half of those contacted replied saying they would be reporting to the Chicago based data bank office.

A further outgrowth of the so-called "Clark Report" is the development of proposed standards for lawyer disciplinary and disability proceedings. These standards are designed to be models for adaptation by the courts when structuring their disciplinary proceedings.

The Judicial Conference of the United States at its meeting last month approved, with modifications, those ABA model rules. They are to be distributed to all district and circuit courts with a recommendation for adoption "on an optional basis."



## EMPLOYMENT PLACEMENT WORKSHOPS HELD FOR PROBATION OFFICERS

Probation officers from the Northeast and Southeast regions attended an Employment Placement Workshop September 26-29 held at the Federal Judicial Center. The workshop was the third specialized training course for probation office employment specialists conducted by the Center's Education and Training Division.

An interagency agreement made in March 1977 between Wayne P. Jackson, Chief of the Division of Probation and Norman A. Carlson, Director of the Bureau of Prisons provided the impetus for the training. As a result of the agreement, the U.S. Probation System assumed administrative and operational responsibility for developing employment resources and job referrals for persons released from federal prison on parole or mandatory release. Previously, employment placement was the responsibility of the Bureau's Community Programs Officer.

While the U.S. Probation System has always assisted persons under supervision in seeking employment, the in-

clusion of responsibility for parolees demands more time and more extensive resources from the probation office. As a result, many districts have given one officer the primary responsibility for developing employment programs. (In most instances the officer still maintains his regular duties of supervision and investigation.)

The workshop provided the employment specialist with training in topics such as employment placement in the probation process; legal issues; advocacy and brokerage vs. direct placement; use and development of community resources; trends in employment; and job readiness training. A highlight of the September program was a discussion of the role of the private sector in the hiring of ex-offenders by John R. Armore and Stanley F. Lay of the National Alliance of Business.

Earlier this year similar workshops were held in Los Angeles for the Western region, and Chicago for the North Central and South Central regions. As a result probation officers from each judicial district have been trained in employment placement methods.

## ACTIONS ON FEDERAL RULES

**Federal Rules of Criminal Procedure. Federal Rules of Appellate Procedure.** The Judicial Conference of the United States on September 22nd announced approval of proposed amendments to the Federal Rules of Appellate Procedure as well as proposed amendments to the Federal Rules of Criminal Procedure. They will now be submitted to the Supreme Court of the United States for their consideration. Following that they will be submitted to Congress. If Congress makes no changes they automatically become effective in 90 days.

**Federal Rules of Civil Procedure.** Since several individual and organizations have requested additional time to comment, the original deadline of July 1, 1978 to submit written comment has been extended to November 30, 1978. Rules involved are Rules, 4, 5, 26, 28, 30, 31, 32, 33, 34, 37 and 45. These mainly deal with discovery, including depositions and oral examination (Rule 30) and interrogatories (Rule 33).

Two public hearings have been scheduled by the Advisory Committee on Civil Rules: October 16, 10:00 a.m., at the U.S. Court of Claims, 717 Madison Place, N.W., Washington, D.C. and October 26, 10:00 a.m., at the U.S. Court of Appeals, 31 North Spring Street, Los Angeles, California.

Those interested in testifying should advise the Committee on Rules of Practice and Procedure, Administrative Office of the U.S. Courts, Washington, D.C. 20544. Arrangements may also be made by calling Joseph P. Spaniol, Jr., Secretary to the Committee, in Washington, D.C. (202) 633-6021. Written comment should be directed to the same office.

Judge Roszel C. Thompson (D Md.) is Chairman of the Committee on Rules of Practice and Procedure.

## METROPOLITAN from page 1

policies as to the excuse of jurors who live at great distances and the release of deliberating juries.

Various proposals under consideration by the Justice Department's National Commission for the Review of Antitrust Laws and Procedures were reviewed for the Conference by Chief Judge Clyde Atkins (S.D. Fla.), a member of the Commission, and by Wendell Alcorn, and Richard P. Larm of the Commission staff.

The Conference heard a report on the recommendations proposed recently by the Judi-

cial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. Chief Judge Adrian Spears, and Judge Lawrence King, both members of the "Devitt Committee," made this presentation, and the Met Chiefs continued their discussion of these matters that had taken place at their meeting last April.

The meeting adjourned after a presentation by James Davey, Clerk of Court of the District for the District of Columbia, on the use of "flex-time" for supporting personnel in metropolitan district courts.



## A CONFERENCE ON STUDENT ADVOCACY

On September 18, the first appellate conference on student advocacy programs was held in Richmond, Virginia. The program was developed by William K. Slate, II, the Clerk of the Fourth Circuit Court of Appeals, along with Dulcey Fowler, Senior Staff Counsel, and Professor George K. Walker of Wake Forest University Law School.

The Fourth Circuit implemented a local rule in 1972 permitting third-year law students to practice before the court. Although any attorney of record may have a qualified law student appear, in practice, the rule is most often utilized by law schools which have developed clinical appellate programs. Thus, with six years of history behind the Rule, this conference was convened to discuss the experience and the expectations with respect to student advocacy programs in cases on appeal with emphasis on the need for effective, competent, and responsible student advocates. Participants included representatives of the Court, the law schools throughout the circuit, the offices of the United States Attorneys, the Clerk's Office of the United States Supreme Court, and State Attorneys General, and members of the Bar at large.

Judge John D. Butzner, Jr., (E.D.-4) delivered opening remarks in which he extolled the utility of student advocates before the court. He observed, however, that clinical programs should be considered in the context of the law school experience. Professor Walker's keynote address focused on the report of the Committee of the Judicial Conference of the United States to Consider Standards for Admission to Practice in the Federal Courts, and specifically the Model Rule being recommended by the committee. Judge Robert R. Merhige (E.D.

Va.) spoke at a luncheon and called for a formal internship program for law students similar to the practices followed by medical schools.

In addition to discussions of the Model Student Practice Rule, the program considered the student advocate's case as seen by the court, the student advocate's case as viewed by his attorney and professorial supervisor, brief writing, oral argument and motions practice, as well as the petition for a writ of certiorari. A segment of the program provided opposing government counsel in student advocate cases to present their views.

The conferees agreed that a very positive by-product of the conference was the opportunity for rapport among appellate system participants.

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### STANDARDS from page 3

observation at actual trials. Lawyers who are members of state bars are generally eligible for automatic admission to practice in federal district courts today although a few district courts have other requirements, including an examination. The Committee is proposing that uniform minimum standards of competency for admission to practice in U.S. district courts should be adopted by each district court. However, each district court should implement the standards by their own local rule which might also govern other matters of local concern such as residence and admission of nonresident attorneys *pro hac vice*.

The report will be widely circulated to permit all segments of the legal profession and the public to express their views. After further hearings throughout the country the Committee

## TUITION AID FOR ICM PROGRAM APPROVED

At its August meeting the Board of the Federal Judicial Center approved a new policy governing tuition support for attendance at the Institute for Court Management's, Court Executive Development Program (CEDP). Under the new policy, and subject of course to available funds, the Center will provide all expenses—tuition, travel, and per diem—for qualified individuals to attend any two of the five regular in-service ICM training workshops. The workshops serve as Phase I of the CEDP. Individuals who complete two of the workshops and are approved for one or more of the other three—whether or not they wish to pursue Phase II of the CEDP—will be expected to pay the course tuition, although the Center will pay travel and expenses.

Students will pay all Phase II tuition and the Center will assume travel and per diem.

Any application to the CEDP must have the approval of the applicant's supervisor.

Each application will be evaluated in terms of the Center's general policy guiding tuition aid:

- Courses supported should not duplicate those of the Center
- Support will take account of the recipient's likely tenure with the federal court system
- No individual will receive an undue proportion of the total resources available
- Support will reflect budgetary priorities and limitations.

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will make a final report, probably late next year.

Copies of the report released September 22nd are available from the Administrative Office by contacting Cathy Catterson, (633-6127). It will also be published soon in Federal Rules Decisions.



## NORMAN LYNCH TO HEAD CRIMINAL JUSTICE ACT DIVISION

Norman B. Lynch has been appointed Chief of the Criminal Justice Act Division in the Administrative Office.

Mr. Lynch graduated from the Coast Guard Academy in 1956, majoring in engineering. He received his J.D. degree in 1965 from George Washington University Law School and was admitted to the District of Columbia Bar in the same year. He is also admitted to the bar of the U.S. Court of Military Appeals and to the U.S. Supreme Court bar.

While in the Coast Guard, Mr. Lynch served in many legal capacities including that of Military Trial Judge; Deputy Chief Counsel; Appellate Judge, U.S. Coast Guard Court of Military Review; Chief, Legislative Division, Office of the Chief Counsel; and Chief, Claims and Litigation Division.

### BICENTENNIAL from page 4

but is sufficient to indicate the growing demand for this unique set of films.

The Federal Judicial Center can supply the films to judges wishing to view them at judicial meetings. Judges interested in even wider distribution of the "Equal Justice Under Law" film series may suggest that bar associations, wishing to show

## DOJFC calendar

- Oct. 21-22 Seminar for Court Reporters; Salt Lake City, UT
- Oct. 23-25 Management Training for Supervisors; Baton Rouge, LA
- Oct. 23-27 Management Review Seminar; Washington, DC
- Oct. 30-Nov. 1 Seminar for Circuit Court Clerks; St. Louis, MO
- Oct. 30-Nov. 3 Orientation Seminar for U.S. Probation Officers; Washington, DC
- Nov. 2-3 Management Training for Supervisors; San Francisco, CA
- Nov. 6-8 Management Training for Supervisors; Salt Lake City, UT
- Nov. 13-15 Seminar for Assistant Federal Defenders and Panel Attorneys; Detroit, MI
- Nov. 13-18 Seminar for Newly Appointed District Judges; Washington, DC
- Nov. 14-16 Management Training for Supervisors; Oklahoma City, OK
- Nov. 20-21 Subcommittee on Judicial Statistics; New Orleans, LA
- Nov. 27-29 Seminar for District Court Clerks; Reno, NV
- Nov. 29-Dec. 1 Workshop for District Judges (CA-9); Palm Springs, CA
- Dec. 4-8 Orientation Seminar for U.S. Magistrates; Washington, DC

the films at their meetings, contact:

(Free Loan) Association Films, Inc., 1815 N. Fort Myer Drive, Arlington, Va. (703) 525-4475

## PERSONNEL

### Appointments

- James D. Phillips, Jr., U.S. Circuit Judge (CA-4); Aug. 11
- Robert H. McFarland, U.S. District Judge, Canal Zone; Aug. 17
- Harry E. Claiborne, U.S. District Judge, D. NV; Sept. 1
- Norma L. Shapiro, U.S. District Judge, E.D. PA; Sept. 29

### Confirmations

- Richard S. Arnold, U.S. District Judge, E. & W.D. Ark.; Sept. 2
- Bruce S. Jenkins, U.S. District Judge, D. Utah; Sept. 20
- Harold A. Baker, U.S. District Judge, E.D. IL; Sept. 20
- Patricia J. E. Boyle, U.S. District Judge, E.D. Mich.; Sept. 22
- Julian A. Cook, Jr., U.S. District Judge, E.D. Mich.; Sept. 22
- Theodore McMillian, U.S. Circuit Judge, (CA-8); Sept. 22
- Mariana R. Pfaelzer, U.S. District Judge, C.D. CA; Sept. 22
- Donald E. O'Brien, U.S. District Judge, N. & S.D. IA; Oct. 4

### Nominations

- Carin Ann Clauss, U.S. District Judge, DC; Sept. 19
- B. Avant Edenfield, U.S. District Judge, S.D. GA; Sept. 26

### Death

- Algernon L. Butler, U.S. Senior District Judge, E.D. NC; Sept. 5

### Resignation

- Marvin E. Frankel, U.S. District Judge, S.D. NY; Sept. 30

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### THE THIRD BRANCH

VOL. 10, No. 10 OCTOBER 1978

### THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

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NOVEMBER, 1978

### SENTENCING INSTITUTES AND THE FEDERAL JUDICIAL CENTER

While the debate continues over the revision of the federal criminal code and the corresponding changes in the federal sentencing system, the Center maintains its role in seeking to better understand the workings of the present system and in assisting the federal judiciary to function more efficiently within that system. The important vehicle for the judiciary's efforts in this regard has been the sentencing institutes convened under the auspices of the Judicial Conference pursuant to 28 U.S.C. §334.

Congress enacted the institute legislation in 1958 with a stated interest in seeking uniformity in sentencing procedure. These institutes, also called joint councils, were to be convened "for the purpose of studying, discussing, and formulating the objectives, policies, standards, and criteria for sentencing those convicted of crimes and offenses in the courts of the United States." Additionally, Congress suggested several agenda items that would be appropriate for the institutes. These items range from the general formulation of sentencing principles and criteria to the specifics of the content and use of presentence reports.

While the responsibility for improving the agendas for these

See SENTENCING p. 2

### PRESIDENT SIGNS BANKRUPTCY ACT

On November 6, President Carter signed Public Law 95-598, styled "An Act to establish a uniform Law on the Subject of Bankruptcies," commonly referred to as the Bankruptcy Reform Act. It takes effect in stages; full implementation will not be realized until after April, 1984, by which time the Judicial Conference is directed to recommend to Congress the number of bankruptcy judges needed. Beginning October 1, 1979, however, all bankruptcy cases will be filed with the bankruptcy court rather than the district court, and will be subject to the provisions of bankruptcy law contained in the new act.

#### Legislative Development

When the new bill, introduced as H.R. 6, in January of 1977, was reintroduced as a "clean bill," H.R. 8200, in March of 1977, the Judicial Conference established a special committee to review it and report to the Conference. Judge Wesley Brown, himself a former referee in bankruptcy, chaired the committee. The committee concluded that the Conference should take no position on the substantive provisions contained in Title I, which revises various chapters of the bankruptcy law itself. However, after more than a year of study, the committee unanimously recommended disapproval of H.R. 8200's Title II, concerning reorganization of the bankruptcy court. Title II, among other things, made the former referee positions the equivalent of Article III judgeships to be filled by Presidential appointment, placed eleven bankruptcy judges on the Judicial Conference and one on the Board of the Federal Judicial Center. Although the Judicial Conference had unanimously disapproved the bill, H.R. 8200

passed the House in February 1978. The Senate, on September 7, 1978, passed its own version, S. 2266, introduced by Senator DeConcini of Arizona and expressly approved by the Judicial Conference. This bill retained appointment power in the district courts, subject to approval of the Circuit Judicial Councils.

On September 28, the House adopted a variety of amendments to H.R. 8200, including provisions that were different in major particulars from both the earlier House and Senate versions. When informed of that development, the Chief Justice, acting as the statutory Chairman and spokesman for the Judicial Conference, communicated with Senators designated as conferees on the bill to request that the Senate conferees study the House bill in light of the major departures from the bill passed by the Senate only three weeks earlier.

In the closing days of the 95th Congress, members and staffs of both houses and the Attorney General reached a compromise without the usual resort to a

See BANKRUPTCY p. 2



**BANKRUPTCY from p. 1**

conference committee. This final version passed the House on October 5 and the Senate on October 6. That version retained presidential appointment but reduced representation on the Judicial Conference to two members with one on the Federal Judicial Center Board. A special meeting of the Executive Committee of the Judicial Conference was convened on October 15; it proposed that the Judicial Conference urge the President to veto the bill. All members of the Judicial Conference were polled and a veto was unanimously recommended. When the Office of Management and Budget requested the views of the Conference, this view was communicated to the President and OMB. The Conference documented its position with detailed calculations showing that in the first ten years of operation, the act would add a minimum of a half billion dollars' cost—without taking

into account the inflation factor. The Conference described this as unnecessary and wasteful.

**Training Plans**

Meanwhile, recognizing that the Judiciary had two obligations, *first* to communicate its views to the Congress and the President, and *second*, to execute the will of the political branches should the bill become law, contingency plans were being developed to comply promptly with its provisions, especially those relating to training of bankruptcy court personnel during the transition.

To carry out these training programs arising from the substantive changes in bankruptcy law and procedure created by the new act, the Federal Judicial Center is now prepared to present two three-day seminars, each for half of the bankruptcy judges in the country. One is scheduled for Atlanta, March 7-9 and one in Salt Lake City, April 4-6. These will

replace the regional seminar contemplated prior to the act's passage. The Center will also provide focused education of the new act for other bankruptcy court personnel, assuming supplemental appropriation are enacted.

**Provisions of P.L. 598**

The new act creates no new bankruptcy judgeships at this time. Instead, it extends through March, 1984, the terms of bankruptcy judges now serving. In the interim, the Administrative Office will analyze the need for additional bankruptcy judges, in order to enable the Judicial Conference to make recommendations to Congress on the number needed. During the transition period from October 1979, to April, 1984, merit screening committees of bankruptcy judges and law school representatives will come into existence, with the authority to recommend termination of bankruptcy judges whose six-year terms expire. The Chief Judges of the courts of appeals can terminate such judges and appoint replacements. The act authorizes, starting October 1, 1979, law clerk positions for bankruptcy judges and position upgradings for bankruptcy clerks' offices.

The act broadens the bankruptcy courts' jurisdiction to allow all matters involving a particular debtor (which replaces the term "bankrupt") to be brought into one proceeding in one jurisdiction.

Among the points of Senate-House difference, which were worked out late in the session are these:

- The act provides, after March, 1984, for Presidential appointment and Senate confirmation of bankruptcy judges to terms of 14 years. The Senate bill (S. 2266) would have provided appointment by the Circuit Councils; as signed, the Councils are limited to submitting

**SENTENCING from p. 1**

institutes rests with the Committee on the Administration of the Probation System (and then ultimately the Conference itself), the actual agenda preparation is a coordinated activity. Planning is conducted among a subcommittee of the Committee, representatives of the circuit for whom the meetings are convened, the Center, and staff from the Bureau of Prisons, the Parole Commission, and the Probation Division of the Administrative Office.

Over the last thirteen months, three sentencing institutes have been held. In October of 1977, the Second and Seventh Circuits held a joint meeting at Morgantown, West Virginia; in September of this year, the Ninth Circuit met at Goleta, California; and in October, 1978, judges from the Eighth and Tenth Circuits met at Denver, Colorado. Each institute

included a visit to a nearby federal correctional institution, providing the participants with an opportunity to meet and talk with inmates, guards, and prison staff personnel. Among the items discussed at these institutes were observation and study procedure, S.1437 and sentencing reform, sentencing councils, sentencing alternatives and their consequences, the new presentence report monograph (A.O. Publication 105), and the concurrent sentence doctrine.

Two institutes currently are in the planning stages. The First, Fourth, and D.C. Circuits will be meeting in April 1979 in Durham, North Carolina. The agenda will include a visit to the federal prison at Butner, North Carolina. In October of next year, the judges of the Fifth Circuit will convene in Dallas, Texas, and an institutional visit will be included as part of this program.



## BANKRUPTCY from p. 2

ing non-binding lists of recommended candidates to the President. The act provides the President must give "due consideration" to Council recommendations.

- The House bill would have made the bankruptcy courts adjuncts of the courts of appeals, but in the act, as signed, they retain their current status and are identified as adjuncts to the district court.

- The act, as passed, retains bankruptcy appeals to the district courts; the House bill would have given this appellate jurisdiction to the courts of appeals. The act, however, does authorize appeal to the appellate courts if both parties consent, and further authorizes the appellate courts, alternatively, to provide by rule for appeal to a panel of three bankruptcy judges appointed by the courts of appeals.

- The act raises the salaries of bankruptcy judges to \$50,000. House provisions for more liberal retirement provisions were set aside in favor of much more modest provisions in the Senate bill.

- The act leaves largely intact the trustee system, but directs the Attorney General to appoint United States trustees in 18 districts for a pilot program. The Attorney General is to analyze the operation of the pilot system, and report to Congress the results of the analysis by January, 1984. For cases filed after September, 1978, in the non-pilot districts, bankruptcy

judges appointing trustees must select them from a panel named by the Director of the Administrative Office.

- The act provides for the appointment of two bankruptcy judges to the Judicial Conference of the United States, the two to be selected by the bankruptcy judges at large. The September House version provided for three bankruptcy judges. The act also adds a bankruptcy judge to the Board of the Federal Judicial Center, to be selected by the Judicial Conference as are the two appellate and three district judges who now serve on the Board.

### Informational Role of the Judicial Conference

In remarks delivered at Fordham University several weeks after Congressional passage, the Chief Justice observed that "when Congress is legislating on matters directly affecting the courts, . . . it is not only appropriate for judges to comment upon issues which affect the courts but absolutely necessary. The Judicial Conference of the United States and the Administrative Office of the United States Courts receive requests from Congress from fifty to one hundred times each year to comment on pending bills, and, of course, we do so," as Congress contemplated when creating the Conference. Congress, the Chief Justice noted, is "overwhelmed . . . with a host of other more visible problems" than those of the courts. "Someone," he said, "must make these problems real to the busy members of Congress," and "this is clearly one of the obligations of the office I occupy." The Chief Justice went on to note that "the ultimate responsibility rests with the Congress—especially if questions of statutory change, or rules of procedure, jurisdiction or appropriations are involved."

## NEW LAWS AFFECT JUDICIAL BRANCH

In the closing days of the 95th Congress, several important bills were cleared for Presidential action which are now public law.

**Jury System Improvements Act (P.L. 95-572).** The act increases the attendance fee for jurors to \$30 per day and provides for enhanced attendance fees for both grand and petit jurors on account of extended service. Subsistence and travel allowances are revised to incorporate by reference those amounts now authorized for supporting court personnel in travel status. At any time that the travel rate is increased by the Director of the Administrative Office of the United States Courts to parallel an increase in the general government rate, jurors would then receive the benefit of such an increase.

Jurors' employment is also protected by the law's provision for a civil penalty and injunctive relief against an employer who discharges or coerces an employee as a result of the employee's federal jury service or summons for such service.

All fees and subsistence provisions become effective 60 days after November 2, the date the act was signed. All other provisions became effective as of the date of enactment.

**Witness Fees Reform Act (P.L. 95-535).** Witness fees including subsistence and travel allowances for witnesses appearing in federal court and grand jury proceedings or giving depositions, are increased for the first time since 1968 as a result of legislation signed into law October 27. The act increases per diem for witnesses to \$30; replaces the set travel allowance with guidelines directing reimbursement for actual expenses

See NEW LAWS p. 4

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## GARNISHMENT REGULATIONS ISSUED

Regulations relating to the garnishment of salaries or wages of officers and employees in the Judicial Branch of the federal Government were issued by the Director of the Administrative Office of the United States Courts effective October 1, 1978. The regulations were issued after clarifying amendments to the Social Security Act were enacted in 1977 (Public Law 95-30). These amendments clarify garnishment provisions of the Social Security Act, 42 U.S.C. 659, by defining the term "United States" as "the Federal Government of the United States, consisting of the Legislative Branch, the Judicial Branch and the Executive Branch thereof...."

42 U.S.C. 659 as amended, provides that the United States shall be subject in like manner and to the same extent as a private person to *State* legal process brought to collect moneys due from or payable by the United States, the entitlement to which is based upon remuneration for employment, in order to enforce an officer's or employee's legal obligation to provide child support or to make alimony payments.

Any private person who is a present or former officer or employee of any agency, court or other establishment of the Judicial Branch of the federal Government, including a law clerk or secretary to a retired Justice of the Supreme Court of the United States and any person who is an officer or employee of the Supreme Court of the United States in regular active service is subject to the garnishment regulations.

The regulations provide:

- Procedure for service of process
- Data and documents to

## NEW LAWS from p. 2

of public transportation and grants allowances for private transportation equal to those granted to federal employees; and replaces set subsistence allowances with that granted federal employees. The new fees became effective upon signing by the President.

**U.S. Marshals' Transportation Expenses Act (P.L. 95-503).** The act authorizes any federal judge or magistrate to direct a U.S. marshal to furnish an indigent defendant released pending further proceedings, with noncustodial transportation or with transportation expenses to an appearance before that court, any division of that court, or any federal court in another judicial district in which criminal proceedings are pending. Defendants may also be provided with money for subsistence expenses en route if needed.

The provisions of the act take effect as of the date the act was signed, October 24.

**District Court Reorganization Act, H.R. 14145 (P.L. 95-573).** The act changes judicial district dividing lines in Illinois by placing Kankakee County in the Central District of Illinois. In addition, the Act abolishes the two divisions of the District of Maine; authorizes White Plains, in the Southern District of New York, and Johnstown, in the Western District of Pennsylvania as places of holding federal court; and requires the Director of the Administrative Office of the U.S. Courts to conduct a comprehensive study of the

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accompany legal process

- Compliance with process
- Invalid legal process
- Officials to accept legal process.

Copies of the regulations may be obtained from the Director of the Administrative Office of the United States Courts.

judicial business of the Central District of California and the Eastern District of New York and make recommendations to Congress on the need for creation of new judicial districts from portions of the two districts or the immediately surrounding districts. The study is to take place within one year of enactment, or November 2, 1979. All other provisions take effect 180 days after enactment.

**Federal District Court Organization Act, S. 3371 (P.L. 95-408).** Title 28 USC is amended to: add Ashland in the Eastern District of Kentucky and Corinth in the Eastern Division of the Northern District of Mississippi as additional places for holding court; eliminate the six divisions of the Western District of Louisiana; and include Bottineau, McHenry, Pierce, Sheridan and Wells Counties in the Northwestern Division of the District of North Dakota.

The act also makes changes in the boundary lines of district courts in three states: Florida—Madison County is moved from the Middle District to the Northern District; Illinois—existing Eastern and Southern Districts are realigned to form Central and Southern Districts; New York—Columbia, Greene and Ulster Counties are transferred to the Northern District.

Provisions of the act become effective 180 days after October 2, the date the act was signed.

**Privacy of Rape Victims Act (P.L. 95-537).** This legislation amends the Federal Rules of Evidence to provide for the protection of privacy of rape victims by prohibiting the use of evidence of reputation or opinion about the past sexual behavior of the victim. Use of direct evidence of past sexual behavior is restricted to cases in which a judge finds, after a hearing, that the evidence is



## LAWYERS IN THIRD CIRCUIT CRITIQUE STRUCTURE OF CIRCUIT CONFERENCES

In 1975 Chief Judge Collins Seitz (CA-3) appointed a Lawyers Advisory Committee to act as liaison between the members of the bar who practice in the Circuit and the federal judges of the Third. It was a move to bring about greater bar participation in formulating rules and procedures adopted in the Circuit, and through bench-bar cooperation bring about better judicial administration generally. Time and events have demonstrated that the work of this committee is mutually beneficial.

The Committee met during the time of the Third Circuit's Judicial Conference last month and spent considerable time discussing the structure of the annual conference, a matter specially referred to their group by the Judicial Council. Following this they reported:

The proposal to eliminate the permanent members of the Circuit Judicial Conference was approved by the attorneys present. They reasoned that significant contributions had been made by those members and stated that they had reason to expect contributions in the future.

The membership of the conference is not too large; business in itself is neither a problem nor undesirable in other respects. Problems raised, related to size, could be resolved by organizing small work sessions, better organization of the program and better utilization of talents of the attorney members.

The rule requiring attendance to maintain permanent membership should be polished; the main objective could be to assure that interested members attend.

They questioned an

See LAWYERS p. 8



Third Circuit Judicial Conference participants photographed after panel discussion on "Role of the Federal Courts in the Future." They are (L. to R.): Circuit Executive Wm. A. (Pat) Doyle; Prof. Burt Neuborne (N.Y. Univ.); Judge Joseph F. Weis, Jr. (CA-3) who presided over the panel; Prof. Bernard J. Ward (Univ. Texas); Chief Judge Collins J. Seitz (CA-3); Prof. Geoffrey C. Hazard, Jr. (Yale); and Prof. Chas. Alan Wright (Univ. Texas).

### A "first" for the Third

## THIRD CIRCUIT JUDICIAL CONFERENCE HELD IN VIRGIN ISLANDS

The Third Circuit Judicial Conference met at St. Thomas, Virgin Islands, last month and they thereby broke their traditional practice of meeting in one of the three states embraced by the Circuit. In all the circuits, where accommodations permit it, the site of the meetings is rotated. Two U.S. District Judges and two part-time magistrates are headquartered in this district.

In addition to holding a meeting of the Judicial Council of the Third Circuit and a business meeting for district and circuit judges there were a variety of subjects taken up by lecturers or panelists—contempt, last term's Supreme Court opinions, discovery, and opinion writing.

Chief Judge Edward Devitt and Thomas E. Deacy, Esquire, were present to explain progress on the work of their committee on standards for admission to practice in the federal courts. They called for questions and there were many. The discussions made it evident that the judges and lawyers of

the Third Circuit share the concern of many that the quality of advocacy in the courts be maintained at a high level. Public hearings to take up the recommendations presented to the Judicial Conference last September will be held in metropolitan cities next April, after which a final report will be submitted. Tentative dates and places where hearings will be held are: San Francisco, California, April 5-6; Kansas City, Missouri, April 9; Atlanta, Georgia, April 17-18; and Washington, D.C., April 26-27.

Of prime interest was a report of the Lawyers Advisory Committee, a group of lawyers who practice in the Circuit. Many matters on which they reported were controversial and general agreement was arrived at only after spirited discussions. Some resolutions reported were:

- Retrials. There should be adopted throughout the Circuit a mandatory rule that if on appeal a case is reversed and remanded for retrial, the retrial

See THIRD CIRCUIT p. 6



**THIRD CIRCUIT from p. 5**

should be before a judge other than the judge who originally presided. The rule should apply to both criminal and civil cases and jury and non-jury trials.

- **Admission to Practice.** In any state containing more than one district, counsel admitted to practice before any U.S. District Court should be permitted to practice before all districts in that state, thus obviating the necessity of retaining local counsel. Defeated was a proposed amendment to the resolution which stated that counsel admitted to practice in any district in the Circuit should be permitted to practice in all other districts throughout the Circuit.

- **Uniformity.** This resolution called for greater uniformity of practices and procedures before

all district judges in the same district.

- **The New Jersey Rule.** This resolution recorded objections to the New Jersey rule which prohibits any one lawyer or law firm from appearing in more than three matters in any one year unless their principal office is in the district.

- **Court Reporters.** Embraced in this resolution were difficulties with court reporters, (including excessive charges) and the problem created when reporters turn out non-reproducible transcripts.

- **Oral argument.** Objections to limitation on oral argument were enunciated in this one which stated that the Third Circuit's limitation is too restrictive.

**NEW LAWS from p. 4**

required under the Constitution; that the assailant was someone other than the accused and with whom the victim had had past sexual relations; or when the issue of consent is raised where there had been prior sexual behavior with the accused.

The act applies to trials which begin more than thirty days after the date of enactment, October 28.

**Court Interpreters Act (P.L. 95-539).** The act provides for more effective use of interpreters in federal criminal and civil proceedings when a party or witness speaks only or primarily a language other than English or suffers from a hearing impairment.

A certification procedure for interpreters used in federal courts is to be established by the Administrative Office of the U.S. Courts. In addition the Administrative Office must maintain on file a list of all

certified interpreters. Under the act, the federal Government, will pay the cost of interpreters' services in criminal actions initiated by the United States, whether or not the defendant is indigent. In civil actions the judge may apportion all or part of the cost among the parties. Provisions of the act become effective 90 days after its signing, October 28.

**Drug Dependent Offenders Act (P.L. 95-537).** The supervision of drug dependent probationers, parolees and others released from prison is transferred from the Bureau of Prisons to the U.S. Probation Service by the act. Authority to grant contracts to independent organizations involved in rehabilitation of drug dependent offenders is also given to the probation service. The act becomes effective October 1, 1979.

**ETHICS IN GOVERNMENT ACT SIGNED**

On October 26, the President signed into law the Ethics in Government Act of 1978 (P.L. 95-521). The law requires detailed financial disclosure by members of Congress, executives of the Executive Branch, and judges and other officers of the Judicial Branch. The first reporting period covering the year 1978 calls for statements to be filed by May 15, 1979, on forms which will be developed by the Administrative Office. The Administrative Office will distribute copies of the public law as soon as they become available.

The Act contains separate titles covering financial disclosure for officers and employees of each branch of the federal Government. Title II, Judicial Personnel Financial Disclosure Requirements, in part requires:

- **Annual disclosure reports.** to be filed by Supreme Court Justices, federal judges, and judicial branch employees who are authorized to perform adjudicatory functions or are paid the equivalent of a GS-13 salary or above.

- **Presidential nominees for judgeships** to file disclosure reports when their nomination are sent to the Senate.

- **Judicial branch employees** to file the annual reports with the Judicial Ethics Committee to be established by the Judicial Conference of the United States. The committee is authorized to monitor and investigate compliance with the disclosure requirements.

- **Each judicial officer and judicial employee** to file the report with the Judicial Ethics Committee and to file a copy as a public document with the clerk of the court on which he sits or serves. Reports may not be used





Director A. Leo Levin (left) and Attorney General Ingemas Gullnas of Sweden photographed during a briefing session at the Dolley Madison House.

## FJC HOSTS VISITORS FROM ABROAD

Briefing official visitors from abroad — judges, legal officers and others — is an important function of the Federal Judicial Center. Referrals to the Center come from the State Department, United Nations, American and Federal Bar Associations and other groups. Visitors often learn of the Center from others who have visited here.

During the past year, the Center received visitors from Brazil, Korea, Australia, Japan, Thailand, Chile, New Zealand, South Africa, Afghanistan, Nigeria, Colombia, Zaire, France, Great Britain, Canada, Sweden, Indonesia, and Iceland. Most recently, the Center hosted Ingemas Gullnas, Attorney General of Sweden, Sanjo Poedjosoebroto, Vice Chief Justice of the Supreme Court of Indonesia, and Hrafa Bragason, Judge in the Reykjavik, Iceland, civil court.

Mr. Gullnas traveled to Washington, D.C. and Atlanta to study the American judicial system. He was particularly interested in court procedures, especially as they related to criminal cases.

His first stop was at the Judicial Center for a general orientation.

Justice Poedjosoebroto's tour of the United States judicial system also began at the Judicial Center. Because of its role in the federal judicial system, the Center is often the first stop for foreign visitors interested in the judicial system of the United States.

Like many Center visitors, Justice Poedjosoebroto was interested in the selection, appointment, tenure, and removal and retirement of federal judges.

Judge Bragason was traveling to cities in the United States as a UN Fellow to do research on court administration for civil cases and training programs for judges.

Other areas in which interest is frequently expressed by foreign visitors are the dual system of courts in the United States; the origin and role of the Center; how newly appointed judges prepare to become a judge; and methods of managing and controlling increasingly large case loads.

## THE SOURCE

The Information Service  
of the Federal Judicial Center

**Advocates on Trial.** Harry Sabbath Bodin. 4 Litigation 304, 61-63 (Summer 1978).

**Chilling Judicial Independence.** Irving R. Kaufman. Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York, November 1, 1978.

**Constitutional Criminal Procedure.** Charles H. Whitebread. American Academy of Judicial Education, 1978.

**Essays on the Constitution of the United States.** M. Judd Harmon. Kennikat Press, 1978.

**How Long Can We Cope?** Warren E. Burger. Remarks to the Seminar on Legal History, The National Archives, Washington, D.C., September 21, 1978.

**The Ideology of Advocacy: Procedural Justice and Professional Ethics.** William H. Simon. 1978 Wis. L. Rev. 30-144.

**Judicial Discipline and Disability Symposium.** 54 Chi-Kent L. Rev. 1-175 (1977).

**Our Tottering Legal System.** W.S. Stafford. 57 Mich. S.B.J. 831-7 (Oct. '78).

**Needed: A Judicial Welcome for Technology—Star Wars or Stare Decisis?** Howard T. Markey. 79 F.R.D. 209-18 (Oct. 1978).

**New Intern Program Gives Law Students Actual Courtroom Trial Experience.** David N. Edelstein. 17 Court Rev. 14-16 (Sept.-Oct. 1978).

**Prison Reform: the Judicial Process.** A BNA Special Report on Judicial Involvement in Prison Reform. Bureau of National Affairs, 1978.

**Third Report on the Implementation of the Speedy Trial Act of 1974.** Administrative Office of the U.S. Courts, 1978.



**LAWYERS from p. 5**

"unexplained discrepancy in the requirements that members appointed by the judges must meet certain criteria, but the appointees of bar association presidents or law school deans need not fulfill the same standards."

- There is a feeling that the Conference has not been organized in such a way that the best use is made of the available lawyer talents.

- Approved was a suggestion that separate meetings be held from time to time between the delegates of a district and the district judges within the district; or, failing this, the delegates should meet alone prior to the Conference.

- Through their report they expressed again a willingness to participate more actively in the work of the Conference.

Copy of the full report of the Lawyers Advisory Committee is available through the Information Services Office of the Federal Judicial Center.

**ETHICS from p. 6**

for any unlawful purpose or any commercial use other than news reporting.

- Reports received by the committee to be held in its custody and be made available to the public for six years. After the six-year period the report is to be destroyed unless needed in an ongoing investigation.

## OFFICIAL calendar

Nov. 29-Dec. 1 Workshop for District Judges (CA-9); Palm Springs, CA

Dec. 6-8 Management Training for Supervisors; Brooklyn, NY

Dec. 7-8 Workshop for District Judges (CA-4); Hilton Head Island, SC

Dec. 7-8 Advisory Committee on Civil Rules, Washington, DC

Dec. 11-13 Seminar for Assistant Federal Defenders and Panel Attorneys; Denver, CO

Dec. 11-15 Management Seminar for Chief Probation Officers; Kansas City, MO

**1979**

Jan. 3 Judicial Conference Subcommittee on Supporting Personnel, Washington, DC

Jan. 5. Judicial Conference Subcommittee on Federal Jurisdiction, Washington, DC

Jan. 8-9 Judicial Conference Subcommittee on Judicial Improvements, Savannah, GA

Jan. 8-10 Seminar for District Court Clerks; Charleston, SC

Jan. 11-12 Workshop for District Judges (CA-5) Orlando, FL

Jan. 15-16 Judicial Conference Committee on Administration of the Probation System, West Palm Beach, FL

Jan. 15-19 (Rescheduled) Orientation Seminar for Newly Appointed Full Time U.S. Magistrates; Washington, DC

## PERSONNEL

**APPOINTMENTS**

Julian A. Cook, Jr., U.S. District Judge, E.D., MI, Sept. 27

Theodore McMillian, U.S. Circuit Judge for the Eighth Circuit, Oct. 2.

Patricia J. Boyle, U.S. District Judge, E.D., MI, Oct. 10

Harold A. Baker, U.S. District Judge, E.D., IL, Oct. 11

Bruce S. Jenkins, U.S. District Judge, D. of UT, Oct. 11

### ADVOCACY REPORT NOW IN PRINT

"The Quality of Advocacy in the Federal Courts" is now in print. This is the Federal Judicial Center's report of research performed for the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. It can be obtained from the Information Service of the Federal Judicial Center.

Earlier this year, the Center distributed a limited number of copies of the report that had been offset-printed from the manuscript. The typeset edition is identical, except that page numbers and some table numbers have been changed. In the recently released report of the Judicial Conference Committee, citations to the Center's study are to the typeset edition.

**THE THIRD BRANCH**

VOL. 10, No. 11 NOVEMBER 1978

**THE FEDERAL JUDICIAL CENTER**

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# The Third Branch

Dolley Madison House, 1520 H Street, N.W., Washington, D.C. 20005

## Bulletin of the Federal Courts

OL. 10, No. 12

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DECEMBER, 1978

### DISTRICT COURT MERIT SELECTION GUIDELINES ISSUED

On November 8, 1978, the President signed Executive Order 12097, "Standards and Guidelines for the Merit Selection of United States District Judges."

Section 1-1 of the Order applies to nomination; Section 1-2 sets forth standards for evaluating proposed nominees.

Nomination provisions are that:

- Whenever a vacancy occurs in a district court of the United States, the President shall nominate as district judge to fill that vacancy a person whose character, experience, ability, and commitment to equal justice under law qualifies that person to serve in the federal judiciary.

- The Attorney General shall assist the President by recommending to the President persons to be considered for appointment who are qualified to be district judges and by evaluating potential nominees. The Attorney General shall receive recommendations of such persons from any person, commission or organization.

- The use of commissions to notify the public of vacancies and to make recommendations for district judges is encouraged. The Attorney General shall make public the suggested

(See GUIDELINES p. 6)



New District Court Judges photographed during one of the sessions of the Seminar last month: In the foreground, Judge Jose A. Gonzalez, Jr. (S.D. Fla.), and (left) Judge Pierre N. Leval (S.D. N.Y.), and Judge Mary Johnson Lowe (S.D. N.Y.).

### NEW DISTRICT JUDGES CONVENE AT FJC

Thirty-three judges assembled at the Dolley Madison House November 13 to start a week of both formal and informal discussions on how to bring about effective judicial administration in the federal trial courts. One district judge travelled from as far away a jurisdiction as the Northern Mariana Islands and one was from the District Court just a few blocks from the Center.

A significant statistic: The largest number of women ever to simultaneously attend such a seminar — six U.S. District Judges and one Trial Judge from the U.S. Court of Claims.

The new judges heard tenured judges tell them how

(See NEW DISTRICT JUDGES p. 7)

### CASE WEIGHTS REVISION UNDERWAY

During the fall and winter the Federal Judicial Center will survey about 100 federal district judges in order to revise the system of case weights. Conducted at the request of the Judicial Conference Subcommittee on Judicial Statistics, the survey follows a two and one half year period of design and refinement.

Under the guidance of Judge John D. Butzner, Chairman, the Center has explored a number of possible techniques to determine the relative burdens of courts' different caseloads, attempting to obtain the best possible accuracy without taking up the judges' time in the process.

Unfortunately, no technique appears feasible except a judge time study. However, the present time study is much simpler than any of those in the past, including the most recent one: The 1969-70 Federal Judicial Center survey that is the basis of the present weighted caseload.

The case weights are seriously out of date, and have been criticized on technical grounds as well. Many things have changed since the 1969-70 time study. The Magistrate Act of 1968 (as amended) has taken effect, and undoubtedly greatly affected the relative burden of

(See CASE WEIGHTS p. 4)



## STATE-FEDERAL

An informal survey of the State-Federal Judicial Councils was recently made by the Federal Judicial Center, and some new and innovative subjects for discussion surfaced. If readers are interested in an amplification of this information, they should write or call Joseph Coudon at the Center (633-6347).

Here are reports from five states which have held meetings since the last column was published:

**Alabama.** As in the past, this council held a meeting at the time the Alabama State Bar met. Subjects discussed: Rule making by state and federal courts, including local rules; desirability of greater bar participation in the rule-making process; the necessity of assuring that local rules are published and available; and the desirability of assuring that rules promulgated do not bring about constitutional issue challenges.

Another subject on the Council's agenda was better liaison between courts and the bar membership. For the federal courts there was the suggestion that in each judicial district there be formalized a liaison group with which the chief district judge, or all of the district judges, meet at least once yearly to discuss matters of mutual interest.

Justice James Bloodworth, of the Supreme Court of Alabama, reported on procedures followed by his court on questions certified from the federal courts. The Justice reports it is working extremely well in Alabama. Council member Judge John C. Godbold (CA-5 and FJC Board member) agrees and reports: "It is working well and speedily, and through constant liaison

between the Supreme Court of Alabama and the Fifth Circuit judges residing in Alabama, [potential] problems in the administration of certification procedures have been eliminated as they arise."

**Maryland.** Chief Judge Edward S. Northrop and Judge Alexander Harvey represented the federal courts at the last meeting of this state's council. State judges on the council are Judges Anselm Sodaro (who presided), C. Awdry Thompson and Robert S. Sweeney. Reported was a program for coordination between state and federal probation officers. Presentence reports have been exchanged, and though there was some concern expressed that a federal defendant might be able to secure a copy of the report, assurance was proffered that the state presentence report is not filed as a public record and is available to the defense attorney only.

Also on the agenda was the matter of possible conflicts and priorities on case assignments in the trial courts; however, it was agreed that very few problems have arisen. Efforts have been made to avoid this; in those instances where federal court trial dates are set far in advance, the state judges have agreed to let the federal trial go forward first.

Judge Harvey explained their new local rule which became effective last April, which provides for a fine to be imposed on attorneys who appear late for hearings or trials. In addition to a fine, gross violations could result, through application of the rule, in referral to the Disciplinary Committee of the court.

A final matter discussed was the proposed legislation to abolish diversity jurisdiction. It was estimated that if the bill is passed into law, approximately eight percent of the cases now

tried in federal courts would be filled in the state courts.

**Oregon.** A new agenda item for this Council was the recurring problem of the accused not only appearing for arraignment without an attorney but also declaring one was not wanted. To preclude the filing of a Section 2254 case in the federal courts if a state judge has not appointed a lawyer, it was suggested that the judge conduct a careful examination of the defendant to make a supportable and clear finding that the defendant intelligently waived his right. But, it was pointed out, the court must set this out on the record. Judge Alfred T. Goodwin (CA-9) recommended for consideration a dialogue contained in several pages of the California state judges' bench book. Basis for the California procedure may be found in *Farreta v. California* (48 L. Ed. 2d, 562 [1975]).

Comparisons were made of plea bargaining procedures in both the Oregon courts and the federal courts and the problem extant throughout the two systems. Another developing problem in Oregon was reported — problems in the state court caused by recent statutory provisions for expanded sentence review by the Oregon Court of Appeals. Also described was the new state law which permits their Parole Board, by a 4-5 vote to reduce a sentence imposed by a judge, significantly increasing the authority of the Board.

Memorandum opinions, per curiam opinions, published and unpublished opinions and when they should be used was an important topic brought up, as was the problem of avoiding conflicting decisions on identical points of law when the courts sit in panels or departments. It was decided a case data bank accessible in computer may be the answer.

Two more subjects were

(See STATE FEDERAL p. 4)



**EXTENSIVE TRAINING  
OFFERED PROBATION  
OFFICERS**

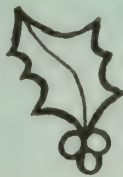
Chief U.S. Probation Officers met December 11-15, at a management seminar held in Kansas City, Missouri. The meeting was the first attended by all chief probation officers since 1950. Judge James M. Burns (D. Ore.) was chairman of the seminar.

The curriculum, developed by the Education and Training Division of the Federal Judicial Center and the Probation Division of the Administrative Office, included an update on matters involving the probation system, pretrial services, the Bureau of Prisons and the U.S. Parole Commission. Workshops were conducted on personnel matters, law related issues and the purposes and impact of Monograph 105, a new publication on the writing of the pre-sentence report.

During the meeting, four task groups were created to assess needs and develop policy recommendations on goals and standards for the probation system, professional accountability, interoffice and inter-district communications, narcotic aftercare and employment placement.

The federal probation system has a long tradition of training. As early as 1930, probation officers attended periodic regional institutes. Nineteen years later the concept of a

(See PROBATION p. 5)



**HOLIDAY GREETINGS  
from  
The Chief Justice**



I extend warm greetings for an enjoyable Holiday Season to all personnel of the Federal Judiciary and their families and my deep appreciation to the Judges and all those who daily support the administration of justice. By this I include the Clerks of all courts and their staffs, Magistrates, Probation Officers, U.S. Marshals, Court Reporters, and all who labor to make the system work.

We can look back on the past year with satisfaction; altogether your dedication and efforts have brought about significant improvements in the quality of our system of justice. There has been a spirit of cooperation in the pursuit of our mission to provide for all Americans a system of justice which is fair, accessible, competent, swift and deserving of public confidence. That we have public confidence in a period when confidence is not universally accorded to public institutions is a tribute to steadfast dedication throughout the Judicial Branch at every level.

The Congress finally passed and the President has signed legislation providing much needed additional judges, advocated by the Judiciary for more than eight years. The Administrative Office continues to provide support which makes effective planning a reality; the Federal Judicial Center continues its valuable service in research, planning, and continuing education.

Federal Judges have again terminated a record number of cases. There has been more effective communication between the branches of government and between the federal courts and state courts on matters affecting the administration of justice.

On a broader front as we approach the Holiday Season, we close a year with another period of peace for our country. We extend our greetings and support to the President and peacemakers of all nations for their persistent efforts to eliminate the blight of war.

Mrs. Burger joins me in wishing each of you and your loved ones a happy and safe Holiday Season and a continued dedication to our common calling.

**FEDERAL BAR ASSOCIATION ESTABLISHES AWARD FOR  
TRIAL ADVOCACY**

Another step forward in the current trend towards efforts to improve trial advocacy was taken by the Federal Bar Association in Cincinnati, Ohio through the establishment of the Judge John W. Peck Award for outstanding trial practice.

The award will be given at the University of Cincinnati College of Law by the Cincinnati Chapter of the Federal Bar Association. Judge Peck has for many years taught a course in trial practice

at this law school and has been active in many continuing educational bar programs designed to improve advocacy skills.

Judge Peck assumed Senior Judge status on July 1, 1978, after having served as a state judge, a U.S. district judge and a judge of the U.S. Court of Appeals for the Sixth Circuit. His service on these courts covers a span of years totalling almost 30 years.

**Third Branch**

U.S. Courts and the Federal  
Judicial Center. Inquiries or changes of

Co-editors:

Alice L. O'Donnell, Director, Division of  
Federal Judicial Center

Administrative Office, U.S. Courts



## DELEGATION FROM IRELAND STUDIES U.S. FEDERAL DEFENDER PROGRAM

On November 9 a delegation from Ireland visited the Criminal Justice Act Division of the Administrative Office for an extended briefing on the United States Federal Defender Program. The delegation consisted of District Justice William A. Tormey, Solicitor Michael Reilly, Frank Sheridan of the Irish Embassy and Irish Department of Justice attorneys Tim Dalton and Parse Rayel.

At the present time in Ireland a court appointment system is used to provide counsel to criminal defendants who are unable to afford legal representation. The Irish Government is considering the creation of a national public defender program, and sought the assistance of the Administrative Office in reviewing and studying the Federal Defender Program followed in this country.

Topics such as contributions from defendants to help pay for representation, fiscal controls exercised over the defender offices and the role of the judiciary in the Criminal Justice Act system were discussed. The delegation was also provided

(See IRELAND p. 8)

### NINTH CIRCUIT from p. 7

shall be handled should the Chief Judge of the Circuit not reject a claim "and is unable to assure himself that appropriate action has been taken..." In those instances the Chief Judge will refer the complaint to "a committee of three judges of the circuit, which may include circuit and district judges appointed by him to consider the complaint."

The new procedures were codified only after all the judges of the Ninth Circuit, as well as members of the bar who practice in this Circuit, were given an opportunity to review and comment on them.

### CASE WEIGHTS from 1

various types of cases. The same can be said of many other procedural changes. There has been a great increase in the number of cases in some of the most difficult categories: Civil rights cases (employment, accommodations, etc.) have increased 229%, antitrust cases have increased 78%, narcotics cases 212%, and tax fraud cases 98%. At the same time, motor vehicle personal injury cases have decreased 36%.

The effect of these large shifts in caseload composition must be accurately measured in order to provide adequate resources for the courts. It is widely thought that the existing system never adequately measured the difficulty of particularly demanding litigation, and that it may, as a result, have undervalued the caseload of the metropolitan, or largest courts. Although the survey may or may not bear this out, it has been designed in a fashion that would determine whether this kind of effect exists.

The approach has been to strip past time studies to their essentials, and design a form that is as little burden as possible. Since the only purpose of the survey is to obtain case weights, many of the items in past surveys are not included: The types of work judge time

was devoted to, time devoted to activities that do not involve cases, etc. The survey will be modeled on one designed by the late Chief Judge Charles Clark, prime author of the Federal Rules of Civil Procedure and Chairman for twelve years of the old Judicial Conference Committee on Statistics. As a judge, law reformer, teacher, and researcher, Judge Clark was convinced that sound statistical information was essential for policy making. His method of case weighting, which was both simple and effective, has proved an excellent model for the forthcoming revision.

Unless there are unforeseen problems, the Federal Judicial Center will contact a sample of about 100 judges in early January, requesting time records for the period through March. The resulting weights will be calculated in the winter and spring, applied to the data for fiscal year 1979, and used in preparing the next judgeship budget of the Judicial Conference later in 1979.

The Institute for Law and Social Research, Washington, D.C., has conducted an evaluation of case weighting techniques under contract to the Center. Their report will be available by January 1.

### STATE FEDERAL from p. 2

aired: When a summary judgment may be used and the value of settlement conferences.

**Virginia.** With Chief Justice Lawrence W. I'Anson presiding, this Council met for its semi-annual meeting at the time the Fourth Circuit Judicial Conference was held. Reported to the group was the status of a certification system for the Commonwealth of Virginia. A bill has been proposed to implement the system but is being carefully reviewed since constitutional questions related

to the legislation have been raised, one being whether the legislature has authority to confer jurisdiction on the state Supreme Court. Further action is anticipated when the General Assembly next meets.

**Washington.** Conflicts in dates foreclosed the council meeting called by Chief Judge Marshall A. Neill (E.D. Wn.) for September 11; however, the Judge will be setting another date soon. This state rotates the chairmanship between a state and federal judge and meets at least once a year.



aining center was fully developed. With strong support from Judge William J. Campbell, the Division of Probation and the University of Chicago, the Judicial Conference officially authorized the opening of the Federal Probation Training Center in 1950. Under the leadership of Chief Probation Officer Ben S. Becker, (N.D. Ill.), the Chicago Center provided orientation seminars and inservice training for the entire federal probation system from 1950-1970.

In 1970 responsibility for training was gradually shifted from Chicago to the Federal Judicial Center in Washington. A period of phenomenal growth ensued between 1973 and 1977. Congress authorized 1000 new positions in those five years. Thus since 1970, the Education and Training Division of the Judicial Center has conducted orientation seminars for over 1400 new probation officers. For several years orientation seminars were held almost every month in cities throughout the country. Today these orientation seminars, approximately four per year, are held at the Dolley Madison House to train those officers employed to fill vacancies created by retirement and resignation.

With the expertise provided by the Probation Division and instant input and evaluation from the field, the Education and Training Division continuously reviews the format of the seminars to insure that the training is meeting the needs of new officers. Although many changes have been made in format and methodology, the seminars continue to focus on the basics of presentence report writing, investigative techniques, supervision, sentencing alternatives, and relationships with the Court, the Bureau of Prisons, the Parole Commission

and the A.O. Probation Division.

As the responsibilities of probation officers continue to expand, the training courses become more extensive. A wide variety of seminars have been conducted in the past few years. Management and supervisory training has been provided for chief and supervising probation officers and chief probation office clerks. Specialized courses have been offered in crisis intervention, rational behavior therapy, employment placement, and supervision of Indian caseloads.

Advanced seminars have offered participants a choice of nine out of 26 possible topics during a week of training. This approach allowed each officer to

#### LAW DAY, U.S.A.—1979

"Our Changing Rights" is the theme selected for the twenty-second annual nationwide observance of Law Day, U.S.A., traditionally held each May 1st.

The program was started as an activity of the American Bar Association, with state and local bar associations participating throughout the country.

determine what subjects would be most beneficial for his particular caseload. The most widely attended sessions have included white collar crime, financial data interpretation, guidelines for sentencing recommendations, innovative sentencing techniques, supervision of the difficult offender and new approaches in case management.

The expansion of training over the past 48 years is best exemplified by the fact that in Fiscal Year 1978 over 1500 federal probation officers participated in training seminars such as these. It appears that the future of probation training will continue its heavy concentration on advanced training seminars.

#### FJC REPORT ON VOIR DIRE EXAMINATION RELEASED

*The Voir Dire Examination, Juror Challenges, and Adversary Advocacy* has been released by the Federal Judicial Center. The report evolved from *Conduct of the Voir Dire Examination: Practices and Opinions of Federal District Judges* a Center report published in 1977. While the new report summarizes the information and opinions of the 1977 publication, it places them in a larger context — a general analysis of the adversary system's functions and effectiveness in the selection of jurors.

The major theme of the report is that problems inherent in understanding the role and importance of the voir dire examination and challenges can be divided into categories and analyzed separately. Four categories of research problems are examined: Problems of interest, criteria, parameters and methodology. The report attempts to clarify the problems involved in each category and to suggest solutions.

The section on parameters presents for the first time a mathematical model of jury selection. This model plots the changes in the average bias of a twelve-member jury as a function of the selection strategies of defense and prosecution attorneys. Use of the model enables a better understanding of the relative superiority of the struck jury method to other, sequential methods of jury selection.

The report concludes that the major problem before policymakers in the courts is that of defining appropriate goals for jury selection.

Copies of the report may be obtained from the Information Service of the Federal Judicial Center.





## U.S.-CANADIAN TRANSFER BEGINS

Prisoner transfers between Canada and the United States took place October 12 and 13. Forty American and 28 Canadian offenders were the first to be returned to their native countries under a 1977 treaty agreeing to the transfer. Enabling legislation was enacted in the U.S. in October 1977 (P.L. 95-144), and in Canada, April 1978.

*Information Booklet for United States Citizens Incarcerated in Canadian Prisons* is a pamphlet prepared by the United States Department of Justice to familiarize United States citizens who are Canadian prisoners with the terms and implementation of the Treaty and enabling legislation and operation of United States parole laws and prison

system.

Bureau of Prisons Director Norman A. Carlson, and Donald Yeomans, Commissioner of the Canadian Penitentiary Service, held a brief ceremony at the Chicago Metropolitan Correctional Center where the exchange took place. From Chicago, the returning Americans were designated to appropriate institutions throughout the federal system.

Canada is the third nation with whom the U.S. has transferred prisoners. Three hundred twenty-nine Americans have been transferred from Mexico in a series of transfers begun last December and seven Americans were transferred from Bolivia in August. A second exchange with Canada is planned for March, 1979.

### GUIDELINES from p. 1

guidelines for such commissions.

- Before making recommendations, the Attorney General shall consider whether: Public notice of the vacancy has been given and an affirmative effort has been made, in the case of each vacancy, to identify qualified candidates, including women and members of minority groups; the selection process was fair and reasonable; those recommended meet the standards for evaluating proposed nominees.

- In evaluating proposed nominees, consideration will be given to reports of Department of Justice investigations and all other relevant information concerning potential nominees and their qualifications.

The standards to be used in determining whether a person is qualified to serve as a district judge are whether that person:

- Is a citizen of the United States, is a member of a bar of a state, territory, possession or the District of Columbia, and is in good standing in every bar in

which that person is a member.

- Possesses, and has a reputation for integrity, good character, and common sense.

- Is, and has a reputation for being, fair, experienced, even-tempered and free of biases against any class of citizens or any religious or racial group.

- Is of sound physical and mental health.

- Possesses and has demonstrated commitment to equal justice under law.

- Possesses and has demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and their processes.

- Has the ability and the willingness to manage complicated pretrial and trial proceedings, including the ability to weigh conflicting testimony and make factual determinations, and to communicate skillfully with jurors and witnesses.

### PAPER ON EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS ACTIONS AVAILABLE

The Center has a limited supply of two publications by Judge Charles R. Richey: *Manual on Employment Discrimination and Civil Rights Action in the Federal Courts* and *Selected Jury Instructions Used in Employment Discrimination and Civil Rights Actions*. These publications were originally prepared for use at the Center's District Court Workshops.

The original material has been edited and updated.

Public Law 95-486 signed October 20, 1978 provides for the appointment of 117 new district court judges. Entitled "An Act to provide for the appointment of additional district and circuit judges and for other purposes," it is popularly known as the Omnibus Judgeship Act. Those parts of the Act which provide for additional judgeships take effect "immediately upon the President's promulgation and publication of standards and guidelines for the selection, on the basis of merit, of nominees for the United States District Court judgeships authorized by the Act." Nominating Commissions established in February 1977 now send the President lists of those qualified for circuit judgeships. See *The Third Branch*, Volume 9, No. 2, p. 1, February 1977.

The President, however, may waive the standards and guidelines with respect to any nomination, by notifying the Senate of the reasons for such waiver.



WLY APPOINTED DISTRICT  
JGES from p. 1

y tried their cases—civil and  
ninal, jury and nonjury—and  
y answered questions on  
h matters as sentencing,  
endar control, jury utilization,  
e flow management, judicial  
ivities and ethics, patent  
es, and the Federal Rules of  
evidence.

Senior staff at the Adminis-  
trative Office and the Federal  
Judicial Center met with the  
Judges to explain how these  
processes could be supportive. The  
Chief Justice met with them  
several times, once at the Dolley  
Madison House and once when  
President and Mrs. Burger hosted a  
"black tie" dinner honoring the  
new judges at the Supreme  
Court.

## NINTH CIRCUIT ADOPTS PROCEDURES FOR JUDICIAL MISCONDUCT COMPLAINTS

Chief Judge James R.  
Browning (CA-9) announced  
last month that the Ninth Circuit  
Council has adopted new  
procedures for processing any  
complaints that might be filed  
regarding judicial misconduct in  
the circuit.

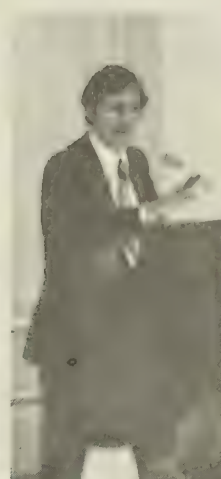
The procedures were drafted  
by a committee appointed by the  
Council last May, the members  
of which were Circuit Judges  
Farrington and Goodwin and  
District Judges MacBride,  
Kamath, Schwartz and Sharp.  
With one exception, informal  
administrative practice called  
for these procedures in the past,  
but they were formalized and  
codified, Chief Judge Browning  
said, to "make the bar and the  
public more aware of this  
internal administrative process  
and to demonstrate that the  
judiciary is willing and able to  
handle complaints against  
judges administratively."

The one addition to the proce-  
dure outlines how a complaint

(See NINTH CIRCUIT p. 4)



1



2



3



4



5

(1) The Chief Justice of the United States visited the FJC to extend a special welcome to the latest group of U.S. District Judges to join the federal judiciary. On the left is Judge Wm. J. Campbell (Seminar Program Chairman) and on the right, Judge Sam C. Pointer, Jr. (N.D. Alabama). (2) Judge Pointer photographed as he discussed with the newly appointed U.S. District Judges the Federal Rules of Evidence. (3) Group photograph taken during a presentation on

"The Role of the Judge in the Settlement Process" by Judge Frederick B. Lacey (D. N.J.). (4) Judge Sherman G. Finesilver (D. Colo.) and Judge William J. Campbell conferring prior to Judge Finesilver's presentation on the trial of civil nonjury cases. (5) Judge Damon J. Keith (CA-6) photographed discussing "Management of the Criminal Case from Indictment to Trial" and "Guilty Pleas and Plea Bargaining."



# DOJ calendar

Dec. 11-15 Management Seminar for Chief Probation Officers; Kansas, City, MO

Dec. 18 Meeting of the Board, Federal Judicial Center; Washington, DC

## 1979

Jan. 3 Judicial Conference Subcommittee on Supporting Personnel; Washington DC

Jan. 5 Judicial Conference Subcommittee on Federal Jurisdiction; Washington, DC

Jan. 8-9 Judicial Conference Subcommittee on Judicial Improvements; Savannah, GA

Jan. 8-10 Seminar for District Court Clerks; Charleston, SC

Jan. 11-12 Workshop for District Judges (CA-5); Orlando, FL

Jan. 15-16 Judicial Conference Committee on Administration of the Probation System; West Palm Beach, FL

Jan. 15-19 Orientation Seminar for Newly Appointed Full Time U.S. Magistrates; Washington, DC

Jan. 19 Judicial Conference Committee on Administration of the Magistrates System; San Diego, CA

Jan. 17-19 Conference for Federal Appellate Judges; Los Angeles, CA

Jan. 22-23 Judicial Conference Committee on the Operation of the Jury System; Brownsville, TX

Jan. 22-25 Seminar for Federal Public Defenders, New Orleans, LA

Jan. 23-24 Judicial Conference Review Committee; Singer Island, FL

Jan. 24-25 Judicial Conference Advisory Committee on Judicial Activities, Singer Island, FL

Jan. 26 Judicial Conference Joint Committee on Code of Judicial Conduct; Singer Island, FL

Jan. 25-26 Judicial Conference Committee on Implementation of the Criminal Justice Act, New Orleans, LA

Jan. 29-30 Judicial Conference Committee on Court Administration; Singer Island, FL

Feb. 1-2 Judicial Conference Committee on the Administration of the Criminal Law; San Juan, PR

Feb. 2 Judicial Conference Committee on the Budget; Ft. Worth, TX

Feb. 9 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC

## IRELAND from p. 4

with relevant materials to help in understanding the Federal Defender system.

Following this meeting, the delegation spent the next two weeks visiting the Federal Public Defenders in Baltimore, Atlanta, and New Orleans, as well as the Community Defender in the federal unit of the New York City Legal Aid Society.

# PERSONNEL

## APPOINTMENTS

Richard S. Arnold, U.S. District Judge, E. & W.D., AR, Oct. 16

Donald E. O'Brien, U.S. District Judge, N. & S.D., IA, Nov. 2

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## THE THIRD BRANCH

VOL. 10, No. 12 DECEMBER 1978

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## Bulletin of the Federal Courts

D165-A

VOL. 11 No. 1

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

JANUARY, 1979

### LIBRARIANS SEMINAR SCHEDULED FOR MARCH

Librarians from federal courts across the nation will convene in Washington, D. C., March 19-20, 1979, for the second Center-sponsored seminar for federal court librarians. The last seminar was held in 1973. About 40 participants, librarians who perform full-time professional services and who are nominated by the chief judges of the circuit and district courts are expected to attend. The program is being planned by Center staff in the Education and Training and Inter-Judicial Affairs and Information Services Divisions in cooperation with the Library Services Branch at the Administrative Office.

Technological advances of interest to court librarians will

See LIBRARIANS p. 5

### COURT MANAGEMENT STATISTICS RELEASED BY ADMINISTRATIVE OFFICE

The Administrative Office of the United States Courts has released the 1978 edition of *Management Statistics for United States Courts*. The report presents key workload and performance statistics for each court of appeals and each district court for the statistical years ending June 30, 1973 through 1978.

Statistical profiles for the United States courts of appeals show overall workload statistics in terms of appeals filed, terminated and pending. Figures are also shown in per panel terms, obtained by dividing the total caseload figures by the number of authorized three-judge panels.

In addition, opinions per

See STATISTICS p. 4

### IMPLEMENTATION OF REVISED BANKRUPTCY ACT COMMENCED

When the revised Bankruptcy Act became law last November The Chief Justice, the Director of the Administrative Office and the Director of the Federal Judicial Center started work on their involvement in the implementation process. Some major announcements in connection with these implementation plans have now been made.

Provisions of the Act call for The Chief Justice to appoint an Advisory Committee on Bankruptcy Rules. These appointments have been made and the members are:

Ruggero J. Aldisert, Chairman  
U.S. Circuit Judge  
United States Court of Appeals  
Pittsburgh, Pennsylvania

See BANKRUPTCY p. 4



### WARREN OLNEY, III, SECOND DIRECTOR ADMINISTRATIVE OFFICE, EULOGIZED

Warren Olney, III, Director of the Administrative Office from January 1958 to October 1967, died in Berkeley, California, on December 20 after a long illness.

Mr. Olney's death marked the end of a long and illustrious career which included a number of high positions in both public service and private practice.

Mr. Olney, a native Californian, was the son of Associate Justice Warren Olney, Jr., who served on the Supreme Court of California; his

mother, the former Mary McLean, was Dean of Women at both Pomona College and Stanford University.

After attending public schools in California, Warren Olney went on to earn his A.B. and J.D. degrees at the University of California and was admitted to the California Bar in 1927. Immediately following this he served for two years as Deputy District Attorney of Contra Costa County in California, beginning a career of public service which

SEE OLNEY p. 2

WARREN OLNEY, III



# OLNEY from p. 1

occupied most of the following four decades. Three years of private practice from 1932 to 1935 were interrupted for service as Deputy District Attorney of Alameda County. And though he went back to private practice in San Francisco from 1936 to 1939, he was again drafted to public service, by then Attorney General of California Earl Warren, to be Assistant Attorney General of California in charge of the Criminal Division. From 1942 to 1945 he served in the Fourth Marine Air Wing, with most of his service being in the Pacific Theater. He served until 1945, rising later to the rank of Lieutenant Colonel in the United States Marine Reserves.

In 1945 Mr. Olney returned to private practice but again his reputation for excellence in performance brought him to more public service; from 1945 to 1951 he contemporaneously served as Chief Counsel to the Special Crime Study Commission on Organized Crime in the State of California.

Herbert Brownell, Attorney General in the Eisenhower Administration, enlisted as his assistants men who were to later become nationally known—Warren Olney became head of the Criminal Division; Warren Burger (now The Chief Justice); William P. Rogers (Attorney General and later

Secretary of State); and J. Lee Rankin, who subsequently became Solicitor General.

The California Warren Olney loved always had a magnetic attraction for him but Earl Warren prevailed on him to return to Washington to succeed Henry Chandler, the first Director of the Administrative Office of the United States Courts. In announcing the appointment, Chief Justice Warren said, "I know Mr. Olney to be peculiarly fitted for the important office, both by virtue of his character and experience. He has a zeal for improving the administration of justice, and comes to the position with a background of meritorious service in this field. I am confident that he will make a real contribution to the federal court system."

Chief Justice Burger had high praise for Mr. Olney upon learning of the death of his former colleague. He said:

"Drawing on his broad experience in the law, Warren Olney served as Director of the Administrative Office of the United States Courts in its modern period of expansion and was responsible for new concepts in judicial administration. As much as any single individual, he was responsible for the creation of the Federal Judicial Center, working closely with Chief Justice Warren and Justice Tom Clark. He helped develop the legislation which

ultimately emerged from Congress to authorize a research, development, and continuing education organization for the courts. His life was a career dedicated to public service of the highest order. Integrity and excellence are two words that sum up his life."

Herbert Brownell had the following comments to make about his former associate:

"Warren Olney had a most distinguished career as a lawyer, as a public official in the federal and California governments, as a law teacher and administrator of the federal court system and in important civic endeavors. Throughout, he symbolized the highest standards of professional integrity and competence and gained the admiration and respect of a host of friends and associates over the years of his very fruitful life."

When William P. Rogers, former Attorney General and Secretary of State, learned of Mr. Olney's death, he said: "No word more accurately describes Warren Olney, III and his life than the word 'integrity.'"

"His personal life, his legal career and his outstanding public career are all built on a bedrock of trustworthiness and unswerving dedication to honesty and decency."

"In the United States Department of Justice [where we served together] Warren Olney was universally recognized as an inspiring leader of great legal ability and inexhaustible energy in the fight against organized crime and in the quest for honest government. On several occasions he was present when President Eisenhower expressed great pride in Warren Olney's outstanding achievements as a member of his Administration."

"I will always remember Warren with great pride and affection, as a good friend and companion, and one of the most honorable men I have ever known."

See OLNEY p.

## CIRCUIT JUDICIAL CONFERENCES FOR 1979

First	May 23-25	Nantucket, MA
Second	May 26-29	Buck Hill Falls, PA
Third	Sept. 10-12	Hershey, PA
Fourth	June 28-30	Hot Springs, VA
Fifth	May 6-9	Atlanta, GA
Sixth	May 9-12	Detroit, MI
Seventh	May 7-9	Chicago, IL
Eighth	Aug. 22-25	Rapid City, SD
Ninth	July 26-27	Sun Valley, ID
Tenth	July 27-30	Jackson Hole, WY
District of Columbia	May 20-22	Williamsburg, VA



## Administrative Conference of U.S.

### PROPOSAL TO REVIEW VETERANS BENEFITS TABLED

At its eighteenth plenary session December 15, 1978, the Administrative Conference of the United States voted to table its recommendation on judicial review of benefits decisions by the Veterans Administration. It was the only major issue before the Conference which directly related to the work of the federal courts.

The matter before the Conference recommended legislation which would:

- Amend Section 211 (a) of Title 38 of the United States Code to allow for judicial review.
- Allow those seeking judicial review to do so by beginning a civil action in the United States District Court in which they reside, or in the District Court for the District of Columbia, within 60 days after notice of the Veterans Administration benefits decision.
- Provide that the administrative record subject to review would be made up of any finding of fact and conclusions of law on which the decision was based and an index of all materials the Veterans Administration considered in making its decision, or otherwise contained in the files on the veteran whose service gave rise to the claim.

The plaintiff would be allowed to make reasonable requests for production of indexed items relevant to the prosecution of his or her case.

At its March 9-10, 1978 meeting the Judicial Conference of the United States voted that the Board of Veterans Appeals annually processes 12,000 separate cases and that the Department of Justice estimates that allowing review of veterans benefits decisions would result in approximately

See VETERANS p.5



(Above) Judicial Fellows finalists met at the Federal Judicial Center on January 4 with FJC Director A. Leo Levin and senior staff for a briefing on the operation of the Center.



A reception in honor of past and present Judicial Fellows and the 1979 finalists was held at the U.S. Supreme Court January 4. (Left) Photographed with The Chief Justice and his Administrative Assistant, Mark W. Cannon, at the reception were William J. Daniels (far left) and James A. Robbins (far right), incumbent Judicial Fellows. Mr. Daniels was named this year's Tom C. Clark Judicial Fellow, a designation made possible by a program established by former law clerks to Mr. Justice Clark.

### EDWIN L. COVEY DIES AT 83

Edwin L. Covey, the first Chief of the Bankruptcy Division of the Administrative Office of the United States Courts died on December 1, 1978 in Silver Spring, Maryland.

Mr. Covey served as a Referee in Bankruptcy in Peoria, Illinois until his appointment in March, 1942 as the head of the new Bankruptcy Division of the Administrative Office, which was established by Resolution of the Judicial Conference in January 1941.

Mr. Covey was largely responsible for the successful installation of the Referees' Salary System in 1947 and will be remembered for his educational programs on the use of Chapter XIII of the Bankruptcy Act as an alternative to straight bankruptcy by wage earners. Mr. Covey retired from the Administrative Office on December 31, 1962.



### TRANSCRIPT ON FEDERAL RULES AND RULEMAKING AVAILABLE

The Conference of Metropolitan District Chief Judges which meets twice a year under the sponsorship of the Federal Judicial Center, asked that its April 1978 program include a focused discussion of the processes by which courts make procedural rules. The subject has received considerable attention recently and a significant amount of literature has been written; also, proposals for changes have been made, both for federal and state rulemaking procedures.

At the request of the Conference and the Center, Judge Charles Joiner (E.D. Mich.) designed a program on federal rules and rulemaking. A transcript including comments and discussion by members of the Conference, has been published in 79 Federal Rules Decisions 471. Reprints are available through the Center's Information Services Office.



**BANKRUPTCY from p. 1**

Clive W. Bare  
Bankruptcy Judge  
Knoxville, Tennessee

John T. Copenhaver, Jr.  
U.S. District Judge  
Charleston, West Virginia

Robert Watson Foster  
Dean, University of South Carolina  
School of Law  
Columbia, South Carolina

Asa S. Herzog  
Bankruptcy Judge (retired)  
Fort Lauderdale, Florida

Charles A. Horsky  
Covington & Burling  
Washington, D.C.

Beryl E. McGuire  
Bankruptcy Judge (retired)  
Buffalo, New York

Norman H. Nachman  
Nachman, Munitz & Sweig  
Chicago, Illinois

Alexander L. Paskay  
Bankruptcy Judge  
Tampa, Florida

Joseph Patchan  
Baker, Hostetler & Patterson  
Cleveland, Ohio

Morey L. Sear  
U.S. District Judge  
New Orleans, Louisiana

Morell E. Sharp  
U.S. District Judge  
Seattle, Washington

Section 407(a) of the Act requires the Director of the Administrative Office to appoint a committee of not fewer than seven bankruptcy judges who are to "advise the Director with respect to matters that arise during the transition period or that are relevant to the purposes of the transition period."

William E. Foley, Director of the Administrative Office, has announced that his appointments are:

Bankruptcy Judge John R. Blinn  
Houston, Texas

Bankruptcy Judge Gene E. Brooks  
Evansville, Indiana

Bankruptcy Judge Patricia A. Clark  
Denver, Colorado

Bankruptcy Judge Richard W. Hill  
Trenton, New Jersey

Bankruptcy Judge Robert L. Hughes,  
Oakland, California

Bankruptcy Judge Herbert Katz  
San Diego, California

Bankruptcy Judge C. Albert Parente  
Westbury, Long Island, New York

At the Federal Judicial Center, prior to passage of the Act, contingency plans were developed to facilitate compliance at the appropriate time, especially training programs that would be needed for bankruptcy personnel during and after the transition period. These plans now call for two three-day seminars, each for half of the bankruptcy judges in the system. The first will be held in Atlanta, March 7-9, 1979; and the second will be held in Salt Lake City, April 4-6, 1979.

**STATISTICS from p. 1**

judgeship, percentage of appeals reversed or denied, median time from filing of complete record to disposition and case participation by active, senior and visiting judges appear in the profile of each circuit. The percentage of change in total filings for the current year over the last year and earlier years is also included.

Profiles of the district courts set forth overall workload statistics for the total number of cases which were filed, terminated or pending exclusive of minor and petty offense criminal cases. Actions per judgeship are shown and were obtained by dividing the total statistics for the court by the number of authorized judgeships. Additional information such as median time from filing to disposition in criminal and civil trials is included in each profile. Civil and criminal filings for 1978 by nature of case and offense appear for each district court.

The report was prepared by the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts.

**BOARD OF EDITORS FOR  
COMPLEX LITIGATION  
MANUAL ANNOUNCE PLANS  
FOR NEW EDITION**

The Board of Editors of the Manual for Complex Litigation has announced plans to revise the Manual, and criticism and suggestions from members of the bench and bar are invited. The current edition includes amendments and additions to the Manual to June 3, 1977 with a Cumulative Supplement to August 21, 1978.

To assure timely consideration, all responses to this invitation should be received in writing no later than March 1, 1979, and should be in triplicate of thirteen. They should be directed to Robert A. Cahn whose address is listed below.

The plan of the editors at this time is to publish a tentative draft after all comments have been received and considered following which national hearings would be held. Therefore, anyone interested in receiving a copy of the tentative draft of the proposed revision and an opportunity to comment thereon, should direct communications to this effect to Robert A. Cahn, Executive Editor, Manual for Complex Litigation; 1030 15th Street, N.W.; 320 Executive Building, Washington, D.C. 20005.

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United States District Court  
Northern District of Illinois

Judge Aubrey E. Robinson, Jr.  
United States District Court  
District of Columbia

Judge Robert H. Schnacke  
United States District Court  
Northern District of California

William E. Foley  
Director of the Administrative Office  
of the United States Courts



## NEW CENTER STAFF ANNOUNCED

The appointment of Mary Wyatt January 2 as Chief, Bankruptcy, Magistrate, and Federal Public Defenders Training Branch is the latest of our professional positions recently filled at the Federal Judicial Center.

Mrs. Wyatt received a degree in Juris Doctor from Howard University School of Law, Washington, D.C., where she taught for seven years. She also earned a Master of Laws from New York University Law School. In addition, she has served in numerous educational and governmental positions, including that of staff counsel for the Committee on the District of Columbia, U.S. House of Representatives; hearing examiner for the District of Columbia Public School System; and research psychologist for the United States Public Health Service.

Jeffery C. Thurmond has been named Assistant to the Deputy Director. Mr. Thurmond has completed work for a Masters



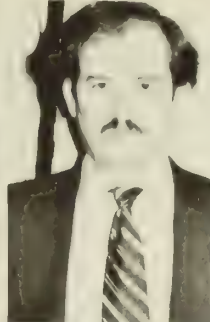
WYATT



THURMOND



COUDON



ZIMMER

Degree in Business Administration and Journalism at the University of Utah. He came to the Center from the American Bar Association where he was Assistant Director of Legal Services. In addition, he has worked for the Law Enforcement Assistance Administration, National District Attorneys Association and The National Center for Prosecution Management.

Joseph Coudon is the new Assistant to the Director, Division of Inter-Judicial Affairs and Information Services. Mr. Coudon is a graduate of the University of Florida School of Law. He served for four years as a Legal Officer and Public

Affairs Officer in the United States Navy. Immediately prior to joining the Center staff he was Assistant to the Dean at Catholic University School of Law.

Markus B. Zimmer has joined the staff of the Continuing Education and Training Division as Assistant to the Chief, Curriculum Development and Evaluation. Mr. Zimmer, who has an extensive background in philosophy, received his Masters of Education from Harvard, where he is a doctoral candidate concentrating in law and education, philosophy of education, and program evaluation.

## LIBRARIANS from p. 1

highlighted, with presentations on word processors, memory typewriters, minicomputers and micrographic hardware. In addition, current developments in various computerized systems and data bases, both legal and non-legal, will be presented. Speakers from the Personnel Division at the Administrative Office will discuss procedures, practices and policies affecting salaries, recruitment, retirement and health benefits. The establishment of the new Library Services Branch and its current and projected activities for services to court libraries, as well as procedures for procurement of library materials and supplies, will also be discussed.

A panel discussion about Washington, D. C. as a center

for legal materials will include speakers from the Federal Register, Government Printing Office, and the National Criminal Justice Reference Service. Panelists will present techniques for compiling legislative histories and will discuss new reference materials of interest to court librarians.

Circuit court librarians will report on the operation of libraries which serve varying types and sizes of courts, including the Third Circuit satellite libraries, chambers libraries, and central libraries. There will also be an exchange about experiences with the kinds of services they provide to court personnel and other users. All participants will have an opportunity to share suggestions for the cooperation and coordination of federal court libraries.

## VETERANS from p. 3

4,600 more appeals to the district courts each year.

Reaffirming a resolution adopted in 1963, the Conference took the position, "that the question whether judicial review of the denial of veterans' claims should be accorded is a matter of public policy which is solely within the province of Congress to decide and that the judiciary should take no position thereon. If Congress should decide to grant such review, the Conference believed that review by a Court of Veterans Appeals, with local hearings by commissioners of the court, would provide a more suitable form of review than by the district courts, the courts of appeals or the Court of Claims."



# **DOJ FJC calendar**

- Jan. 22-23 Procurement Seminar for Ninth Circuit Clerks, U.S. Courthouse; Los Angeles, CA
- Jan. 23-26 Effective Productivity for Court Personnel; Albuquerque, NM
- Jan. 25-26 Judicial Conference Committee on Implementation of the Criminal Justice Act; New Orleans, LA
- Jan. 29-30 Judicial Conference Committee on Court Administration, Singer Island, FL
- Feb. 1-2 Judicial Conference Committee on the Administration of the Criminal Law; San Juan, PR
- Feb. 2 Judicial Conference Committee on the Budget; Ft. Worth, TX
- Feb. 9 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC
- Feb. 12-16 Advanced Seminar for U.S. Probation Officers; Reno, NV
- Feb. 20-23 Effective Productivity for Court Personnel; Sacramento, CA
- Mar. 2-3 Workshop for District Judges (Second Circuit); Liberty, NY
- Mar. 7-8 Judicial Conference of the United States; Washington, DC
- Mar. 7-9 Seminar for Bankruptcy Judges; Atlanta, GA
- Mar. 12-16 Orientation Seminar for Newly Appointed U.S. Probation Officers; Washington, DC
- Mar. 19-21 Seminar for Federal Court Librarians; Washington, DC

- Mar. 19-23 Advanced Seminar for U.S. Probation Officers; Tulsa/Dallas (location tentative)
- Mar. 27-30 Effective Productivity for Court Personnel; Miami, FL
- Mar. 28-30 Conference for Federal Appellate Judges; Atlanta, GA

## **OLNEY from p. 2**

Professor A. Leo Levin, FJC Director, in advising his staff of Mr. Olney's death said that "Warren Olney had a broad view of the potential inherent in a Federal Judicial Center and of the principles vital to its success."

In an interview with Russell Wheeler of the FJC last year about the creation of the Center, Mr. Olney recalled that he was motivated by the conviction that it is almost impossible "to have research and development function effectively if it is either under or a part of the regular ongoing, day-to-day operations.... When that happens, the research and development is always absorbed...."

After retiring as Director of the Administrative Office, he maintained close contacts with Chief Justice Warren and his former colleagues Herbert Brownell, Chief Justice Burger and William P. Rogers.

The Administrative Office, the Federal Judicial Center and the entire federal court system will always bear the stamp of Warren Olney's contributions and leadership. He was indeed their mentor.

# **PERSONNEL**

## **APPOINTMENTS**

- Mariana R. Pfaelzer, U.S. District Judge, C.D. CA, Nov 7
- B. Avant Edenfield, U.S. District Judge, S.D. GA, Nov. 9

## **DEATH**

- Leo F. Rayfiel, U.S. Senior District Judge, E.D. NY, Nov. 18

## **PAPER ON SENTENCING AVAILABLE**

*Policies of the Parol Commission and the Bureau of Prisons as They Affect the Judge's Sentencing Options* is now available from the Center's Information Services Office.

This paper was prepared by Research Division staff to introduce newly appointed judges to the relationship between a judge's sentence of imprisonment and the actions of those agencies that have responsibility for an offender after sentencing. It may have value for experienced judges as a vehicle for bringing them up to date. It deals principally with policies affecting the duration of an offender's incarceration, but it also includes some discussion of policies affecting the offender's experience while incarcerated as well as material on the use of observation and study procedures.



## **THE THIRD BRANCH**

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## Bulletin of the Federal Courts

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DL 11 No. 2

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FEBRUARY, 1979

### NEW PANEL WILL NAME SPECIAL PROSECUTORS

Chief Justice Burger has appointed three circuit court judges as a special Division of the United States Court of Appeals for the District of Columbia Circuit pursuant to the Ethics in Government Act of 1978, P.L. 95-521. The new division will designate special prosecutors called for under the act in any case involving the President, Vice President or other high government official. The three are: Roger Robb, United States Circuit Judge, District of Columbia Circuit; J. Edward Lumbard, Senior Judge, Second Circuit; Lewis Render Morgan, Senior Judge, Fifth Circuit. Judge Robb was designated Presiding Judge.

The Ethics in Government Act of 1978 specified that The Chief Justice should appoint three circuit judges or Supreme Court Justice to a new Division of the Court, one of whom must be a Judge of the District of Columbia Circuit. The Act specifies that in making the appointments priority is to be given to senior circuit judges and retired justices. Not more than one Judge or justice or senior or retired judge or justice may be named to the Division from a particular court. Appointment is for a period of two years.

Application for appointment as a special prosecutor is made to the Attorney General to the special Division of the Court of

See PANEL P. 7

### COURTRAN II TESTED IN LOS ANGELES

A test was recently conducted in Los Angeles to determine the capability of the Courtran II Criminal Caseflow Management system to function as the primary source of criminal case information for the court. Edward M. Kritzman, Clerk for the Central District of California, authorized a ninety-day live test of the Courtran II system in the day-to-day operations of the clerk's office.

This pilot program was commenced on October 1, 1978, and continued through December 31, 1978. Under the direction of Mike Kennedy, the Court's Courtran Coordinator, all requests from the public for criminal case information which were received by mail, telephone or in person were processed by court personnel using the Courtran II system. The test was conducted to determine Courtran II's ability to

provide fast, accurate and current information concerning the status of pending cases or individual defendants.

During the test the average time required to process a request for case information using the Courtran II system was sixteen seconds.

The reliability of the Courtran II system improved during each month of the test. During October, 1978, ninety-one percent of all requests for criminal case information were successfully processed using the Courtran II system. In November, this figure increased to ninety-nine and six tenths percent and in December, 1978, one hundred percent of the requests for information were successfully and rapidly processed using the Courtran II system.

The overall results of this test

See COURTRAN p. 3



U.S. Magistrate Kent Sinclair, Jr. (S.D. N.Y.) photographed addressing an orientation seminar for newly appointed United States Magistrates last month. (See story p. 3.)

### UPDATE ON JUDICIAL SELECTIONS

On January 15 the members of the U. S. Senate and the U. S. House of Representatives met for the opening session of the 96th Congress.

Ten days later names were submitted to the Senate as the first nominees to fill four of the 152 new judgeships created by the 1978 Omnibus Judgeship Act. All were for the U. S. District Court for the District of Massachusetts.

See UPDATE p. 2



**UPDATE from p. 1**

The judicial selection machinery was set in motion even before Congress met last month and it appears all those involved in the process will move with "all deliberate speed."

Attorney General Bell has on more than one occasion said he and the President are prepared to carry out their tasks as quickly as possible. Indeed, the Attorney General, on January 19, speaking before the Utah State Bar, said: "I am publicly committed to trying to have 80 percent of the [152] new judges confirmed by April 1."

The work of the Circuit Commissions is going forward with hearings already held or scheduled to be held in February and March.

The American Bar Association continues to evaluate the candidates through its Standing Committee on the Federal Judiciary, presently chaired by Robert D. Raven of San Francisco. The Committee is composed of 14 members, one from each of the 11 judicial circuits except that there are two members from the Fifth and Ninth Circuits, plus one member at large. They play no part in the selection process and only investigate and evaluate those names received from the Attorney General. A lengthy questionnaire, designed by the Committee, is sent to the prospective nominee by the Department of Justice and returns are made to the Attorney General, the Committee Chairman and the Committee member in the circuit where the vacancy exists.

At the conclusion of the Committee's work on a given individual a rating is submitted to the Attorney General, coming from one of the five categories: "Exceptionally Well Qualified," "Well Qualified," "Qualified," "Not Qualified," or "Not Qualified by Reason of Age."

Attorney General Bell has added an additional phase to the ABA's procedure when the Committee has concluded that the candidate is not qualified. This calls for a meeting with the Attorney General, the Associate Attorney General, the circuit member of the Committee responsible for the investigation, and the Chairman of the Committee. The meeting is to explain why the Committee has come to its conclusion, and to explain in as much detail as possible the reasons, while at the same time protecting the confidentiality of the interviewees.

While many factors enter into the Committee's work, they generally limit their investigation and evaluation to professional qualifications — competence, temperament and integrity. The rating of "Not Qualified by Reason of Age," is based on an arbitrary age of 60 or older, unless there are reasons to come to another conclusion, mainly excellent health and a rating which would otherwise be classified as "Well Qualified" or "Exceptionally Well Qualified." Their reasoning is that statistics show that any individual 60 years of age or over taking an initial lifetime appointment to the federal bench does not have the prospects for the tenure on the bench a younger one would; and, that the position and the investment which comes with the appointment requires that it go to a younger individual. In no instances are persons over 64 recommended for an initial appointment.

As for the "advice and consent" of the Senate, activity is very evident in the Legislative Branch. Senator Edward M. Kennedy (D. Mass.), the new Chairman of the Judiciary Committee, made a statement to the committee members when they met January 25th. Much in the statement may be considered announcements.

See UPDATE p. 6

**NOTEWORTHY**

**CA-9.** The Ninth U.S. Court of Appeals now holds sessions in Pasadena, California once a month. Until they acquire their own facilities they are using state courthouse.

**N.D. Illinois.** Following a tradition established some time ago the Federal Bar Association's Chicago Chapter recently hosted the federal judges who sit in the U. S. District Court for the Northern District of Illinois. Chief Judge James B. Parsons delivered what has for the last three years been titled "The State of the Court" address.

The Judge asked the patience of the bar while the district struggles with heavy caseloads. Added to the caseload problem is the space and facilities problem this district faces "facility development [is] wound down to an almost complete standstill," the Judge said.

Judge Parsons became Chief Judge for the Northern District of Illinois April 16, 1975.

**Antitrust.** The National Commission For The Review of Antitrust Laws And Procedures printed their final report January 22, 1979. Copies are expected to be available at the Government Printing Office the last week in February. Stock number to request the report is 040-000-00401-7.

**Advocacy.** The District of Columbia Bar, at its midyear meeting last month, had a panel discussion on "Courts, Lawyers and Administration of Justice."

See NOTEWORTHY p.

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Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.





A group of Magistrates photographed at the Dolley Madison House as they heard a presentation by Judge Morey L. Sear (E.D. La.) on "Settlement of Civil Cases."

## NEWLY APPOINTED MAGISTRATES MEET AT FJC

Twenty-three newly appointed full and part-time United States Magistrates met at the Federal Judicial Center for an orientation seminar January 5-19. The annual program was chaired this year by Chief Judge Otto R. Skopil, Jr. (D. Ore).

The objectives of the seminar were to increase the participants' operational knowledge of pretrial procedures and managerial effectiveness and to supplement their legal and judicial expertise in handling

procedural duties. Subjects covered included:

- Arrest and search warrants
- Initial appearance and pretrial release
- Removal hearings and preliminary examination
- Criminal pretrial and discovery
- Civil pretrial conference and discovery
- Control and disposition of civil cases
- Relations with and use of support services personnel
- Documents and personnel administration
- Professional conduct and problems in conflict of interest
- Techniques and issues for equitable sentencing
- Dispositive motions and opinion writing
- Rules and issues in evidence
- Prisoner litigation: Habeas Corpus and Section 2255 cases

See MAGISTRATES P. 5



Chief Judge Otto R. Skopil, Jr. addressing the Magistrates on the subject of "Special Master Reference."

## COURTRAN from p. 1

have convinced the Central District of California that the use of the Courtran II system as the primary criminal case information system should be continued indefinitely. The system not only demonstrated its capability to function in the day-to-day operations of the clerk's office, but has increased the ability of the clerk's office to

meet the information needs of the public and other related agencies.

With the final phase of the implementation of the Speedy Trial Act scheduled for this summer, California Central feels confident that Courtran II will provide the answers and information they need to monitor their compliance with the Act.

## Special to New Federal Judges

### LIBRARY OF CONGRESS CONTINUES ASSISTANCE TO FEDERAL JUDGES

In the summer of 1977 the Federal Judicial Center, after consulting with staff at the Library of Congress, notified a group of federal judges that, as an experimental project, special services at the Library would be made available to them to determine the feasibility of expanding the research and reference services of the Law Library.

After a few months it became apparent that most judges were interested and found these services helpful. The project was then offered to all federal judges.

Through the cooperation of the personnel at the Library of Congress the Center monitored and evaluated the program as a part of its overall study of the federal court libraries. The results showed that many of the judges made good use of the Library's services, and a review of the requests revealed not only the needs of the judiciary but how long it took to get a response. For example, the greatest number of requests were for legislative histories, and the average amount of time to send out a response was 12 days. In many instances, however, where the requesting judge indicated an immediate need the time was cut down considerably.

A side benefit has been that the type of requests and the jurisdictions from which they emanate, has afforded the new Chief of the Library Services Branch at the A.O., Ms. Pat Thomas, an opportunity to pinpoint what and where the problems are.

The judges who have already availed themselves of this service are reminded, and the new judges are advised that:

- The Law Library of the

See LIBRARY p. 5



## OBSERVATION AND STUDY GUIDELINES ISSUED

Working with the Federal Bureau of Prisons and the United States Parole Commission, the Probation Division of the Administrative Office has developed recommended guidelines to improve the quality of observation and study reports provided to courts on convicted defendants. The guidelines implement recommendations made in the Federal Judicial Center research report, *Observation and Study: Critique and Recommendations on Federal Procedures*.

The report is a comprehensive review of current practices for court ordered local studies and observation and study commitments made under 18 USC 4205 (c) and 5010 (e). Section 4205 (c) provides that federal judges who want more information on adult offenders before passing sentence can commit them to the custody of the Attorney General for ninety days of observation and study. Section 5010 (e) is a similar provision allowing sixty days of observation and study when judges want to know whether youth offenders will benefit from the Youth Corrections Act.

Observation and study procedures were established with the hope they would prove to be an effective method of obtaining professional evaluation to support sentencing decisions. The Center's report, however, showed that observation and study is a cumbersome and periodically misused procedure. In response to these findings, the report proposed a new model for these studies.

Recommendations included in the guidelines:

- Expand the probation officer's role to include preparation of a study referral letter including a statement of

the court's purpose in ordering a study, a brief statement of relevant background information and a list of specific questions for the study examiners.

- Encourage studies to be conducted using local resources arranged for by the Probation Office. The local evaluator is to be provided with the objectives and questions as well as the presentence investigation report.

- Provide that the Bureau of Prisons determine which study reports can be conducted at community treatment centers, metropolitan correctional centers or contract half-way house facilities when a local study is not feasible.

- Require that the Bureau of Prisons insure that referral questions are solicited in each case when not included in the information provided by the U.S. probation officer.

- Allow the Bureau of Prisons only the time necessary to complete the requested reports, unless the full period of 60 days for 5010 (e) or 90 days for 4205 (c) studies is requested by the court.

- Provide for review of the study report by the regional U.S. Parole Commissioner in studies prepared on persons committed under 18 USC 5010 (e).

New procedures making possible an annual authorization to cover the expenses of locally conducted psychiatric and psychological evaluations were recently distributed to chief probation officers by the Administrative Office of the U.S. Courts. The annual authorization will eliminate the need for communicating with the AO on a case by case basis when a study is ordered by the court, thereby eliminating considerable delay.

## LEGISLATIVE OUTLOOK

**Magistrates.** Legislation has been introduced in each House (S. 237 and H.R. 1046) substantially identical to that passed in the 95th Congress. Early action, agreement and final passage is anticipated during the first session.

**Diversity.** A successor bill to H.R. 9622, 95th Congress, is to be sponsored in the House and Senate by Congressman Kastenmeier (D. Wisc.) and Senator Kennedy (D. Mass.). The Justice Department and Judicial Conference will also formally transmit legislative proposals on diversity. Prospects for final passage are uncertain at present.

**Rule of 80.** Legislation enabling federal judges to retire on salary when their years of service as a judge and age total 80 will be introduced as a part of a Judicial Improvement Act to be introduced by Congressman Kastenmeier and Senator Kennedy. Prospects for final passage are uncertain at this time.

**Criminal Code Reform.** Proposals for major revision of the federal criminal code will be an important issue in the 96th Congress. The House demonstrated last year that it did not favor an omnibus reform bill, and opposition to this approach remains strong. Compromise in the Congress may result in piecemeal reform.

**Supreme Court Jurisdiction.** Proposed legislation will abolish mandatory review by the Supreme Court of the United States of appeals (as distinguished from discretionary review by certiorari) of all matters now reviewable by appeal, except appeals of decisions by three-judge courts.

Affected by this new legislation would be:



MAGISTRATES from p. 3



Judge Frederick B. Lacey (D. N.J.) had some advice on the Federal Rules of Evidence.

- Issues in civil rights cases

Sessions were presented by a faculty of district court judges, magistrates and senior staff of the Administrative Office and the Federal Judicial Center.

### DISTRICT JUDGES ATTEND CLERKS OF COURT SEMINARS

Another "first": District court chief judges, or their representatives, attended and participated in seminars held by the Center for clerks of district courts. The programs were conducted in Reno, Nevada and Charleston, South Carolina. Both seminars were chaired by chief judges. Chairman of the Reno seminar was Chief Judge Albert Lee Stephens, Jr., (C.D. Calif.) and, at the Charleston seminar Chief Judge James B. Parsons (N.D. Ill.) presided.

In sessions at the seminar senior staff of the Administrative Office and Federal Judicial Center reviewed and discussed a wide range of topics including:

- New legislation and Judicial Conference actions
- Omnibus Judgeship Bill
- General Services Administration
- Law books and libraries
- Utilization of technological advances
- Procurement of property, equipment and furniture



### NEW FEDERAL JUDICIAL CENTER COURSE BEGINS

"Effective Productivity for Court Personnel," a new type of course offered for clerical and support staff by the Federal Judicial Center, had its initial presentation January 16-19 in Richmond, Virginia. Fifty participants from the Eastern District of Virginia representing the U.S. Marshal's Office, Probation Office, District Court Clerk's Office and Magistrates Office as well as the Circuit Executive's Office and Fourth Circuit Clerk's Office attended the four-day program.

Although the course in Richmond was taught by FJC staff, eight other faculty from probation and clerk's offices around the country have been trained to be faculty as well. An

individual from this group will be one of the two-person team teaching future offerings. Sessions scheduled for this year will be held in Sacramento, Miami, Atlanta, New Orleans, Brooklyn, Savannah, Augusta and Seattle.

Training objectives of the course are:

- Self-Management
- Change and Its Impact
- Systematic Assertiveness Training
- Effective Time Management
- Effective Communication

The course, which is designed for large courts, was developed by the Management Training Branch of the Center's Division of Continuing Education and Training.

### LIBRARY from p. 3

Library of Congress can compile indexes to federal legislative histories not readily available in some jurisdictions.

- Photocopying service as well as computerized data bases of current legislative materials, including the *Congressional Record* are provided.

- Rare treatises and extensive collections of American and foreign law periodicals and primary sources in the United States are accessible.

- The Library can perform bibliographic searches on specific subjects and need not limit its searches strictly to the legal field.

- Many self-initiated reports and bibliographies have already been prepared and are available.

- Among the staff of 90 serving in the Law Library are a number of specialists who have developed an expertise in foreign law who may be available to give expert testimony.

- The librarians can either advise as to the location of

special collections or furnish copies of materials, including briefs filed in the U.S. Supreme Court, bills and resolutions introduced in Congress, reports and opinions of federal and state attorneys general, and administrative regulations of states and territories.

The primary responsibility of all personnel in the Library of Congress is to the Congress, of course, but experience has shown that this has not been a significant problem in the past.

In all instances, initial attempts should be made through local sources or the Circuit Librarian. When making the requests there should be disclosure as to the extent of the judge's own preliminary research to avoid duplicative efforts.

Judges interested in using these services (or their staff) should contact Marlene C. McGuirl, Chief of the American-British Law Division, Law Library, Library of Congress, Washington, D.C. 20540. Mrs. McGuirl's telephone number is (202) 426-5081.



# UPDATE from p. 2

After reminding the membership of the serious nature of the selection process and of his personal hope to work closely with the Administration, especially in honoring commitments to put on the bench more women and qualified members of minority groups, the Senator outlined these plans:

- An extensive questionnaire has been developed to be filled out by all nominees, to assist the Committee in carrying out its responsibilities to "advise and consent." To determine the fitness of the nominees they will, through the questionnaire, receive information on such matters as background, training, experience, writings, medical history, finances, and possible conflicts of interest. The questionnaire is approximately 15 pages in length.

- The Committee has already appointed a special investigative staff to carefully study and analyze the qualifications.

- The Committee will review material compiled by the Federal Bureau of Investigation in its investigations of the nominees. Access to the FBI reports has already been offered.

- The Committee hopes to open up the confirmation process so that interested groups will be afforded a greater opportunity to observe and, if requested, to participate. Hearing notices will be given to the press and will be printed in the Congressional Record.

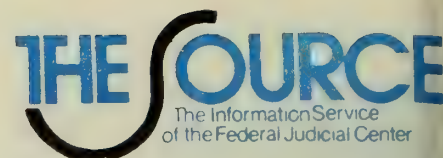
- Efforts will be made to work out solutions to problems previously created by the one-member veto (or the "blue slip process") which currently permits a senator from the home state of the nominee to veto that nominee without

holding any public discussion on the matter. The Senator's statement contained the following: "If the blue slip is not returned within a reasonable time [by one of the Senators], rather than letting the nomination die, I will place before the Committee a motion to determine whether it wishes to proceed to a hearing on the nomination notwithstanding the absence of the blue slip. The Committee, and ultimately the Senate, can work its will."

A new organization came into the picture in 1977 — the Judicial Selection Project. The Project is a coalition of individuals and representatives of organizations committed to assuring that some of the appointments go to qualified minorities, women and others they feel are deserving of representation on the federal bench. Representatives come from groups such as labor, civil rights, women's organizations and public interest. To assist the Project, the National Legal Aid and Defender Association will provide office space and other assistance in their Washington headquarters.

The Judicial Selection Project has announced as its three major purposes:

- To act as a clearinghouse for information and organization;
- To provide the nominating commissions for both district and circuit appointments (as well as senators who do not use commissions) suggested procedures and guidelines for contacting groups identified with minorities, women and public interest lawyers;
- To protest and publicize any acts of omission by the commissions or senators which are inconsistent with the Executive Order or suggested guidelines.



Publications are primarily listed for the reader's information. Those in bold face are available from the FJC Information Services Office.

**Appellate Advocacy in the Federal Courts.** Irving R. Kaufman. 79 F.R.D. 165-72 (1978).

**Current Developments in Judicial Administration: Papers Presented at the Plenary Session of the AALS, Dec. 1977.** 80 F.R.D. 147-201 (Dec. 1978).

**Disqualification of Judges — Canon 3C of the Code of Judicial Conduct.** John C. Godbold. 3 J. of Legal Prof. 1-9 (1978).

**Federal Criminal Sentencing: Perspectives of Analysis and a Design for Research.** L. Paul Sutton. GPO, 1978.

**Federal Sentencing Patterns: A Study of Geographical Variations.** L. Paul Sutton. GPO, 1978.

**Internal Operating Practices.** California Court of Appeal, First Appellate Division. 1978.

**Our Judicial System Needs Help: A Few Inside Thoughts.** J. Clifford Wallace. 12 U. San Francisco L. Rev. 3-14 (1977).

**Predicting Sentences in Federal Courts: The Feasibility of a National Sentencing Policy.** L. Paul Sutton. GPO, 1978.

**Publications of the National Institute of Law Enforcement and Criminal Justice: A Comprehensive Bibliography.** John Ferry. GPO, 1978.

**Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States.** Sept. 21, 22, 1978. 79 F.R.D. 187-201 (Oct. 1978).

**The Relative Impact of Diversity Cases on State Trial Courts.** Victor E. Flango & Nora F. Blair. 2 State Ct. J. 20-6 (Summer 1978).

See SOURCE p. 8





ANEL from p. 1

appeals which is authorized to appoint a special prosecutor and define prosecutorial jurisdiction. Judge Robb, who was a member of the tripartite commission on the Revision of the Federal Court Appellate system, has been a judge of the United States Court of Appeals for the District of Columbia Circuit since 1969. On several occasions he served as special counsel for the Senate Judiciary Committee.

Judge Lumbard was appointed to the United States Court of Appeals for the Second Circuit in 1955 and was Chief Judge from 1959 to 1971, when he took senior status. He was United States Attorney for the Southern District of New York from 1953 to 1955.

Judge Morgan was appointed to the United States Court of Appeals for the Fifth Circuit in 1968, taking senior status in 1978. From 1961 to 1968 he was a District Judge for the Northern District of Georgia, and for the final three years was Chief Judge.

## HENRY HANSSEN TO HEAD MANAGEMENT REVIEW

The Administrative Office of the United States Courts has announced the appointment of Henry R. Hanssen as Chief of the Division of Management Review.

Mr. Hanssen, who is a native of Napoleon, Missouri, graduated from the United States Naval Academy in 1943 and received a Masters in Business Administration from George Washington University in 1966. He served for 30 years as a submarine officer in the United States Navy and at the time of his release held the rank of Captain. In 1972 he became Clerk of the United States District Court for the Eastern District of Michigan. Mr. Hanssen held that position until his transfer to Washington December 18th.

The Division of Management Review is responsible for the internal audit program for evaluating the efficiency and effectiveness of the operation of the federal courts. This program



was a function of the Office of Judicial Examinations in the Department of Justice until 1975 when it was transferred to the Administrative Office.

As Chief, Mr. Hanssen will supervise a staff of 30. Twenty-five of these are attorneys, accountants or management analysts who are sent in teams of three or more to study each district and circuit court, the Court of Customs and Patent Appeals and the Court of Claims.

## DATES FOR NINTH AND TENTH CIRCUIT JUDICIAL CONFERENCES

Last month incorrect dates were listed for the Ninth and Tenth Circuit Judicial Conferences. The correct dates are:

**Ninth Circuit July 22-25**  
**Sun Valley, Idaho**

**Tenth Circuit June 27-30**  
**Jackson Hole, Wyoming**

## NOTEWORTHY from p. 2

Five members of the D. C. Bar reported on their conclusions based on different facets of the Devitt Report and the FJC report on advocacy. Plans for the future: Further study by this group with final conclusions to come later which will be the report of the D. C. Bar as a whole.

Judge Carl McGowan (C.A. Dist. Col.) spoke on this subject at a luncheon meeting of the Association of American Law Schools last month. A former law professor himself, the Judge has some definite ideas on law school education and advocacy and how it should be taught. (Copies of the Judge's speech are available in the FJC Information Services Office.)

## U.S.-PANAMA SIGN TREATY ON PRISONER TRANSFERS

A treaty on prisoner transfers was signed January 11 between the United States and Panama. When ratified, the treaty will make it possible for Americans arrested and convicted under Panamanian legal jurisdiction to request that their sentences be served in penal institutions in the United States.

Panamanians convicted of crimes in the United States will have the same right to petition for transfer to Panamanian institutions to serve their sentences.





# judicial calendar

- Mar. 2-3 Workshop for District Judges (Second Circuit); Liberty, NY
- Mar. 5-6 Procurement, Purchasing, and Contracting Deputy Clerks; Salt Lake City, UT
- Mar. 6-8 In-Court Management Seminar, Huntington; W VA
- Mar. 7-8 Judicial Conference of the United States; Washington, DC
- Mar. 7-9 Seminar for Bankruptcy Judges; Atlanta, GA
- Mar. 12-13 Procurement, Purchasing, and Contracting Deputy Clerks; Baltimore, MD
- Mar. 12-16 Orientation Seminar for Newly Appointed U.S. Probation Officers; Washington, DC
- Mar. 19-21 Seminar for Federal Court Librarians; Washington, DC
- Mar. 19-23 Advanced Seminar for U.S. Probation Officers; Austin, TX
- Mar. 26-27 Procurement, Purchasing, and Contracting Deputy Clerks; St. Louis, MO
- Mar. 27-30 Effective Productivity for Court Personnel; Miami, FL
- Mar. 28-30 Conference for Federal Appellate Judges; Atlanta, GA
- Apr. 2-4 Seminar for Juror Clerks; Little Rock, AR
- Apr. 2-6 Advanced Seminar for U.S. Probation Officers; Charlotte, NC (location tentative)
- Apr. 4-6 Seminar for Bankruptcy Judges; Salt Lake City, UT

- Apr. 18-21 Sentencing Institute (First, Fourth and D.C. Circuits); Research Triangle Park, NC
- Apr. 23-27 Advanced Seminar for Pretrial Services Officers; Chicago, IL (location tentative)

## LEGISLATION from p. 4

- District or circuit court decision that an act of Congress is unconstitutional;
- Circuit court decision that a state statute is contrary to federal law;
- Final judgement of the highest court of a state where a federal treaty or statute is drawn into question, or where the validity of a state statute is upheld against the assertion that it contravenes a federal law.

This legislation appears to be noncontroversial.

**Rules Enabling Acts.** H.R. 480, 481 have been introduced to provide a uniform method for the proposal and adoption of certain rules of court by the U.S. Supreme Court and by the Judicial Conference. The bills would take the rule making power away from the Supreme Court and give the responsibility to the Judicial Conference. In addition, the process by which the Judicial Conference adopts rules would be opened up to widespread comment from the bar and the public. Rules promulgated by the Judicial Conference would not go into effect until approved by the Congress.

# PERSONNEL

## NOMINATIONS

- John G. Penn, U.S. District Judge DC, Jan. 23
- Phyllis A. Kravitch, U.S. Circuit Judge (CA-5), Jan. 23
- Abraham D. Sofaer, U.S. District Judge, S.D. NY, Jan. 23
- Robert E. Keeton, U.S. District Judge, D. MA, Jan. 25
- John J. McNaught, U.S. District Judge, D. MA, Jan. 25
- David S. Nelson, U.S. District Judge, D. MA, Jan. 25
- Rya W. Zobel, U.S. District Judge D. MA, Jan. 25
- Robert M. Parker, U.S. District Judge, E.D. TX, Feb. 6
- Harold Barefoot Sanders, Jr., U.S. District Judge, N.D. TX, Feb. 6

## DEATHS

- Dick Y. Wong, U.S. District Judge, D. HI, Dec. 26
- Martin D. Van Oosterhout, U.S. Senior Circuit Judge (CA-8), Jan. 28

## SOURCE from p. 6

Thomas Jefferson and the Law. Edward Dumbauld. Univ. of Oklahoma Press, 1978.

Variations in Federal Criminal Sentences: A Statistical Assessment at the National Level. L. Paul Sutton. GPO, 1978.

Year-End Report. Warren E. Burger. 1978.

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# The Third Branch

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MARCH, 1979

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## REPORT ON JUDICIAL CONFERENCE PROCEEDINGS

At its semiannual meeting this month the Judicial Conference of the United States passed resolutions dealing with judicial discipline, recommending district judge representation on circuit councils and creating a judicial ethics advisory committee to advise judges on the new ethics law. Of special interest are the following:

**Conduct of Federal Judges.** The Judicial Conference approved principles to be reflected in any legislation dealing with conduct of federal judges. The resolution provided that:

(a) "Removal of an Article III judge from office by any method other than impeachment as provided in Article I of the Constitution would raise grave constitutional questions which

should be avoided.

(b) "The primary responsibility for dealing with a complaint against a United States judge should rest initially with the chief judge of the circuit as presiding judge of the judicial council, who may dismiss the complaint if it is frivolous or relates to the merits of a decision or procedural ruling, or may close the complaint after assuring himself that appropriate corrective action has been taken.

(c) "Any complaint not dismissed or closed by the presiding judge should be referred to a committee appointed by the presiding judge, consisting of an equal number of circuit and district judges and the presiding judge.

See Conference p. 5

## ADVICE AVAILABLE ON FINANCIAL DISCLOSURE REPORTS

A special Advisory Panel of Judges has been appointed to counsel members and employees of the Judicial Branch on questions relating to the financial disclosure forms due May 15 under the Ethics in Government Act. See *The Third Branch*, Nov., 1978, p. 6.

### ADVISORY PANEL

Inquiries should be addressed to Judge Howard Markey, Chairman of the Advisory Panel, at 707 Madison Place, N.W., Washington, D.C. 20439.

Other members of the Advisory Panel are:

Judges Peter T. Fay, Miami, Florida; Damon J. Keith, Detroit, Michigan; Anthony M. Kennedy, Sacramento, California; Philip W. Tone, Chicago, Illinois; Frederick A. Daugherty, Oklahoma City, Oklahoma; John P. Fullam, Philadelphia, Pennsylvania; William J. Jameson, Billings, Montana; William B. Jones, Washington, D.C.; Cornelia G. Kennedy, Detroit, Michigan; Jacob Mishler, Brooklyn, New York; Charles E. Simons, Jr., Aiken, South Carolina.

\* \* \* \* \*

The Advisory Panel should be distinguished from the statutory Ethics Committee mandated by the Act and chaired by Judge Edward A. Tamm; the latter Committee will receive and review the statutory reports.

Under the statute, "reasonable" extensions may be granted for not to exceed 90 days from May, 15, 1979. Requests for extensions should be addressed to the Ethics Committee with a copy to the Advisory Panel.

## SPEEDY TRIAL HEARINGS PLANNED

The Subcommittee on the Constitution of the Senate Judiciary Committee has tentatively scheduled April hearings to consider amendments to Title I of the Speedy Trial Act. The subcommittee is chaired by Senator Birch Bayh (D. Ind.).

The Judicial Conference of the United States has proposed amendments to the act, and the Department of Justice contemplates proposing amendments of its own. The subcommittee also expects to consider recommendations from the General Accounting

See Speedy Trial p. 4

## DATES ARE SET FOR SEMINAR FOR NEWLY APPOINTED DISTRICT JUDGES

Kenneth C. Crawford, the Director of the FJC's Continuing Education and Training Division, has announced that the dates for the next seminar for Newly Appointed District Judges are firm for June 18-23. The seminar will be held at the Dolley Madison House in Washington.

Formal invitations to attend will be in the mail in the near future.



## COURT REFORM PLAN PROPOSED BY PRESIDENT CARTER

On February 27, President Carter sent Congress his program to reform the federal civil justice system. The proposals are intended to increase the efficiency, cut the cost, and maintain the integrity of the federal courts.

When announcing the legislative package he said, "I am committed to improving access to justice by insuring that every person involved in a legal controversy has a readily available forum in which that controversy can be resolved speedily, fairly, and at reasonable cost. To achieve this goal, we must do two things. First, we must develop new means for handling disputes that do not necessarily require full court resolution. Second, we must provide the courts with sufficient resources and improved procedures so that they can function fairly and effectively in those cases that must be brought before them."

The President's program includes five measures considered in the 95th Congress but not passed. These are:

**Court-annexed Arbitration.** The bill would allow federal district courts to adopt a procedure requiring that tort and contract cases involving less than \$100,000 be submitted to arbitration. Litigants would be permitted to appeal the arbitration award.

**Enlarged Jurisdiction of Magistrates.** Under this bill Federal Magistrates, with the consent of the parties, would be authorized to hear any civil cases as well as misdemeanor cases.

**Abolishing Diversity Jurisdiction.** Under this bill diversity jurisdiction would be abolished, except to the extent that "alienage jurisdiction" would be preserved and statutory interpleader clarified. The bill would also completely abolish

all amount in controversy requirements for federal question cases.

**Supreme Court Jurisdiction.** The Supreme Court's control over its docket would be strengthened under a proposal abolishing statutes which now mandate the Court to accept certain appeals for review (as distinguished from discretionary review by certiorari). The proposal would do away with this mandatory jurisdiction, except for appeals from decisions of three-judge courts.

**Minor Dispute Resolution.** This bill would provide federal assistance to states, localities, and private agencies to improve institutions that deal with minor disputes such as those with neighbors, customers, tenants and family members. Improvements in small claims courts and more widespread use of Neighborhood Justice Centers would be promoted.

President Carter also announced new proposals to deal with problems relating to the administration of the federal judiciary and federal practice and procedures. These include:

**New Appellate Court.** Under this proposal, the existing Court of Claims and Court of Customs and Patent Appeals would be combined into a United States Court of Appeals for the Federal Circuit. The new court would retain jurisdiction of the two existing courts and be given jurisdiction over all patent and trademark appeals to promote uniformity and stability of law in these areas, encourage technological innovation and end "forum shopping."

**Rulemaking and Administration.** This bill would require each Court of Appeals to appoint an advisory committee composed of persons outside the court to make recommendations on the practices and operating procedures of that court. A second proposal restructures the memberships

## CHIEF JUSTICE PRESENTS STATE OF THE JUDICIARY ADDRESS

Following a practice of recent years, Chief Justice Burger delivered his Tenth Annual Report on the State of the Judiciary at the midyear meeting of the American Bar Association last month. The following are excerpts from the address. (A full text is available from the Federal Judicial Center Information Services Office.)

**Trial Advocacy Training.** The Task Force on Lawyer Competency, which was announced at the Association's 100th annual meeting in New York last August will best perform its mission if it does not try to solve all problems of legal education in one stroke. It should give first priority to the fundamentals relating to trial advocacy. . . . Practitioners, when hiring law graduates, can advance the cause [by stressing] that practical skills will be considered along with law school grades. . . .

**Lawyer Discipline** Recently I requested the chief judges of all federal courts to participate in The American Bar Association National Discipline Data Bank and all but 9 out of 107 federal courts have agreed to cooperate; and I am confident those not yet reporting will soon do so. In the future, every federal court will be kept current on disciplinary procedures and adopt new rules to strengthen enforcement of the standards of professional conduct. Progress is slow in this area but there is progress.

**New Method for Determining Judgeship Needs.** For 15 years, at the request of Congress, The Judicial Conference has maintained statistics on a four-year basis, and has reported to the Congress regularly as to where additional judges were required. . . . We now see the four-year survey has not



## ABA RESOLUTIONS OF INTEREST TO THE FEDERAL JUDICIARY

Several Resolutions considered by the ABA's House of Delegates when it met in Atlanta last month were of interest to the federal judiciary. Some of these were:

**Media Coverage of Courtroom Proceedings.** This resolution to permit cameras and electronic recording equipment in the courtroom was defeated by a two-to-one margin, even after an amendment was offered which would have required prior consent of witnesses, jurors, and the parties to the litigation. Opponents warned that if adopted and implemented there could be a "circus-like atmosphere in the courtroom which would show the public a distorted version of the trial." Federal Judge Alfred T. Woodwin (CA-9), Chairman of the ABA's Adjunct Committee on Fair Trial-Free Press, argued that television coverage would, in fact, improve courtroom coverage by the press and the image of the legal profession generally.

**National Sentencing Commission.** A resolution to create a national sentencing commission was adopted. A large majority in the House agreed, however, that the commission's proposed sentencing guidelines should be only advisory until such time as there is some national experience with the proposals.

**Federal Rules of Evidence.** A package of seven amendments was passed. These relate to plea bargaining, production of statements of witnesses, revocation or modification of probation, commitment to another district, search warrants for seizure of a person, and joint representation. [The amendment for time for appeal was eliminated.]

**Federal Rules of Criminal**

## JUDICIAL CONFERENCE NAMES TWO NEW FJC BOARD MEMBERS

Under the Act creating the Federal Judicial Center, elections to the Board are made by the Judicial Conference of the United States for four-year terms.

The seven-member Board is made up of The Chief Justice, who is the permanent Chairman, two circuit court judges, three district court judges and the Director of the Administrative Office of the United States Courts.

Judge William Hughes Mulligan, of the Second Circuit, was elected to one of the two positions reserved for circuit judges. He succeeds Judge Ruggero J. Aldisert of the Third Circuit whose term expires this month.

Judge Mulligan has been a federal judge in the Second Circuit for over seven years, having taken his seat on this bench in July of 1971.

The Judge graduated from Fordham University Law School, where he was awarded a J.D. degree in 1942. After service in the United States Army (1942-1946) he was in public service -- as a member of the New York State Law Revision Commission; Chairman of the New York State Citizens' Committee on

Reapportionment; and as a member of the State Commission on the Constitutional Convention. His affiliation with Fordham was continued until 1971 through his membership on the faculty at Fordham and he had the high degree of satisfaction few lawyers realize when in 1956 he became Dean of his Alma Mater.

The work of the federal courts has had Judge Mulligan's interest and concern for many years and as a member of the Judicial Conference's Subcommittee on Federal Jurisdiction he has made valuable contributions to the work of the Conference.

Upon learning of his election to the Board Judge Mulligan said: "I am honored to be elected to the Board of the Federal Judicial Center. It provides me the opportunity to become familiar with the important work of this group and I hope to be able to make some contribution."

The Conference elected Chief Judge Otto R. Skopil, Jr. (D. Ore.) to be a member of the Board to fill the district court position left vacant by Judge Robert H. Schnacke (N.D. Calif.)

See Board p. 7



Judge William H. Mulligan



Chief Judge Otto R. Skopil, Jr.



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worked simply because little attention is given to the needs as they arise. The Judicial Conference has authorized a change in our studies so that from now on, at least every two years, we will report to the Congress as to the particular districts and circuits in which the number of judges is inadequate. The Association and the Foundation [should] contribute their thinking and suggestions on how this problem can be resolved.

**Monitoring Judicial Conduct.** The Judicial Councils of each circuit are the logical bodies to receive complaints concerning judicial conduct and to conduct any needed inquiry. Most problems will be satisfactorily resolved at that stage. What is important is that such inquiries be dealt with fully, fairly and expeditiously, provided that there is no intrusion into the decisional function.

**Rulemaking.** Perhaps the time has now come to take another look at the entire rulemaking process. There is much to be said, pro and con, concerning the present involvement of the Supreme Court as a court.

The Federal Judicial Center and The Judicial Conference [will be requested] to study this problem in light of 40 years of experience under the present system.

**Sentencing Problems.** I am persuaded, after nearly a quarter of a century of close observation, that alternatives to the present system should at least be considered. . . . Possibly a review of sentences by a special panel of two trial judges and one appellate judge would be feasible. Another alternative which has been effective is to permit the initial sentence to be determined by a panel of three judges, including the trial judge who has observed the defendant on trial.

**Bail Release.** Law-abiding citizens must be forgiven when they ask whether release pending trial of an accused who is waiting trial on other charges poses an undue threat to the community. . . . Surely the protection of the public must always be a major factor in the decision to grant bail release. Here we cannot be sure of solutions because we do not know all the facts. The relevant facts can be determined only by careful study which probes, case by case, and name by name, to determine how many persons were released pending trial at a time when previous charges were pending against them.

**Federal Judiciary Council.** Some years ago, a recommendation was made to Congress to consider creating a body representing the three branches of Government, to study and report periodically on the problems and needs of the Judicial Branch. . . . This body could receive suggestions from each of the branches but it would also be free to generate recommendations on its own initiative. It would also serve the very important need of developing better communication between the Judicial Branch and the other two branches on the administration of justice.

**Circuit Councils.** When the circuit councils were established in 1939, Congress provided that the membership should be made up of all of the circuit judges then in active service. Many significant changes have occurred and the federal judicial establishment has multiplied in personnel since that time. We should now consider providing some representation of the district judges on the judicial council of each circuit. Some circuits have regularly invited a district court representative to attend meetings of the council when

SPEEDY TRIAL from p. 1

Office, which has been conducting a two-year study of the implementation of the act.

The amendments proposed by the Judicial Conference were initially developed in 1977 by an *ad hoc* subcommittee of the Committee on Court Administration. This subcommittee was chaired by Judge Carl B. Rubin of the Southern District of Ohio. The district courts were invited to comment on the Rubin Subcommittee amendments in the speedy trial plans that were prepared in the spring of 1978. After reviewing the comments received, the Committee on the Administration of the Criminal Law recommended a number of modifications to the Rubin Subcommittee proposals.

As finally approved by the Judicial Conference, the proposed amendments would:

- Change the time limit from arrest to indictment from 30 days to 60 days;
- Establish a single time limit from indictment to trial of 120 days, replacing the present statute's limits of 10 days from indictment to arraignment and 60 days from arraignment to trial;
- Prohibit commencement of trial within 30 days of indictment unless the defendant consents;
- Eliminate the automatic exclusions of time in 18 U.S.C. § 3161 (h) (1)-(7), and replace them with a limited discretion in the court to extend the time limits if delay is necessitated by specified events; and
- Revise the "judicial emergency" provision to give the circuit councils authority to suspend the time limits and give the chief judges of the district courts authority to do so for brief periods.

In its *Third Report on the Implementation of the Speedy Trial Act of 1974*, issued last September, the Administrative Office of the United States

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(d) "The joint committee should report its findings and commendations to the judicial council, which should take such action as is appropriate to ensure the effective and expeditious administration of the business of the courts within the circuit.

(e) "The judicial council may, in its discretion, refer a complaint and the council's recommended action to the judicial conference of the United States.

(f) "If the judicial council concludes that grounds for impeachment may exist, it should transmit the record upon which its conclusion is based to the judicial conference of the United States; the judicial conference shall then determine whether, in all the circumstances, the matter could be referred to the House Representatives.

"The judicial conference commends that the judicial councils of the several circuits, at their earliest opportunity, consider the formulation and promulgation of rules of procedure for the receipt and processing of complaints against judges in accordance with the principles expressed in paragraphs (a) through (f) above; such rules and regulations should be announced in such manner as to ensure that the public and bar will be informed.

"The Chairman of the Court Administration Committee and the members of the Executive

Committee of the Conference are directed (1) to review and revise, in accordance with the principles stated in [paragraphs (a) through (f) above], the Court Administration Committee's proposed amendments to 28 U.S.C. §332, and (2) to transmit the revised proposed amendments to all members of the Conference for their approval. Following approval by the Conference, the Chairman of the Court Administration Committee, if called upon by the Congress to testify upon pending legislation, is authorized to inform the Congress that, if legislative action is to be taken, the Conference recommends amendments to 28 U.S.C. § 332 as approved by the Conference in accordance with this paragraph.

"All previous judicial conference resolutions or comments upon legislation dealing with the conduct of federal judges are superseded by this resolution."

**Membership of Circuit Judicial Councils.** The judicial conference approved principles to be reflected in any legislation dealing with the membership of circuit judicial councils. The Conference resolved that:

- "Any judicial council having less than six circuit judges as members shall have, as members, not less than two district judges in regular active service.

- "Any circuit council having six or more circuit judges as members shall have, as members, not less than three district judges in regular active service.

- "The number of district judge members of a judicial council, fixed in accordance with the above principles, shall be fixed by majority vote of the active circuit judges of the council.

- "District judges shall serve as members of a judicial council in the order of their seniority, for

## CATALOG OF FJC PUBLICATIONS

The first Federal Judicial Center *Catalog of Publications* is now available from the Center's Information Services Office. Publications in the Catalog report the results of research and analysis done by or for the Center, as well as the products of seminars and workshops conducted for personnel in the federal judiciary.


The publications are arranged by subject and include reports of research projects, staff papers (which normally involve less exhaustive research), presentations at seminars, manuals and handbooks.

Wide distribution has already been made to the federal judiciary and their supporting personnel, as well as all names on a waiting list which has been developed for several months.

terms of three years.

- "No more than one district judge from any one district shall serve simultaneously on the circuit council, unless there is already a representative on the council from each district in the circuit."

**Ethics in Government Act.** The Conference authorized The Chief Justice to form an advisory committee to respond to inquiries from senior employees and members of the federal judiciary who are required to file financial information under the Ethics in Government Act of 1978.

**Cameras in the Courtroom.** Canon 3 of the Code of Judicial Conduct for United States Judges was amended by the Conference to allow broadcasting, televising, recording or photographing of investiture, ceremonial or naturalization proceedings in federal courts. 

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts



ABA from p. 3

**Procedure.** This was also a controversial subject. The House of Delegates turned down one proposal which urged shortening the current appeal period in habeas corpus proceedings from 60 to 10 days. Rejected also: A proposed amendment which required production of defense witness statements at trial in essentially the same manner as is now provided for with respect to government witness statements.

**Standards for Juvenile Justice.** Seventeen volumes of standards relating to juvenile justice were approved after four controversial volumes were withdrawn. These standards are the result of an eight-year effort by a joint American Bar Association-Institute of Judicial Administration Committee

chaired by federal Chief Judge Irving R. Kaufman (CA-2).

**Criminal Code Reform.** A compromise resolution was adopted after considerable negotiating by representatives of the three sections concerned with this subject. The House affirmed its support for the principle of codification but they were far from unanimous when the vote came.

Members of the House took issue with proposed new penalties for economic offenses--the so-called "white collar crimes". Some sections of the resolution would allow up to four- or six-fold restitution to private parties by criminal antitrust and securities violations. They voted down a proposal to integrate these sanctions with existing civil remedies that private parties can obtain on their own. Voted down: A program that would

permit judges to order convicted corporate or individual defendants to notify by mail every person injured by violations of the consumer fraud, securities, or antitrust laws.

**Standards for Criminal Justice.** The six volumes which were not acted on at the annual meeting last August were approved with minor changes in two standards--Pleas of Guilt and The Defense Function. The other four standards are Providing Defense Services, Pretrial Release, Urban Police Function, and Prosecution Function.

**Appeals to Supreme Court.** A resolution was adopted supporting legislation which would virtually abolish obligatory Supreme Court review by appeal.

**Internal Revenue Code.** The House approved recommendations relative to amendments to the Internal Revenue Code. One recommendation would eliminate the marital tax penalty and another would support the so-called "indexing," or automatic cost of living adjustments to income tax rate brackets and personal exemptions. Also, the House voted to ask Congress to modify or repeal certain provisions of the 1976 Tax Reform Act specifically that provision relating to the so-called "carryover basis" that would eliminate the present "step up basis" which occurs at time of death. Heirs who sell inherited property would, with proposed changes, be required to pay capital gains tax based on the value of the property at the time it was acquired by the benefactor, rather than on any increase in value from the time they inherited the property. Problems Treasury Department officials admit--it is not just difficult, in some cases it is impossible, to establish the basis of assets which have been held for years or even generations.

## SUBCOMMITTEES OF THE SENATE AND HOUSE JUDICIARY COMMITTEES

### SUBCOMMITTEE CHAIRPERSONS DESIGNATED

#### SENATE

##### Administrative Practice and Procedure

John C. Culver (D-Iowa),

##### Antitrust, Monopoly and Business Rights

Howard M. Metzenbaum (D-Ohio),

##### Constitution

Birch Bayh (D-Ind.),

##### Criminal Justice

Joseph R. Biden Jr., (D-Del.),

##### Improvements in Judicial Machinery

Dennis DeConcini (D-Ariz.),

##### Jurisprudence and Governmental Relations

Howell Heflin (D-Ala.),

##### Limitations of Contracted and Delegated Authority

Max Baucus (D-Mont.),

#### HOUSE

##### Immigration, Refugees, and International Law

Elizabeth Holtzman (D-N.Y.),

##### Administrative Law and Govern- mental Relations

George E. Danielson (D-Calif.),

##### Courts, Civil Liberties, and the Administration of Justice

Robert W. Kastenmeier (D-Wisc.),

##### Civil and Constitutional Rights

Don Edwards (D-Calif.),

##### Monopolies and Commercial Law

Peter W. Rodino, Jr. (D-N.J.),

##### Crime

John Conyers, Jr. (D-Mich.),

##### Criminal Justice

Robert F. Drinan (D-Mass.),



## NEW STAFF PAPER

*The Federal Judicial Center: A Nontraditional Organization in the Federal Judiciary of the United States*, has been released by the Federal Judicial Center. It was presented by EJC Deputy Director Joseph Ebersole at the Seminar on Reform of Justice Administration, held at Mar Del Plata, Argentina. The new staff paper explains the context within which the Center operates, the history leading to its creation, describes the function of each division and gives examples of Center programs.

Copies of the paper may be obtained from the Information Services Office.

EEDY TRIAL from p. 4

courts presented detailed data about compliance with the Eedy Trial Act time limits in the two years ended June 30, 1977, and June 30, 1978. While the report presented a generally favorable picture of compliance with the statutory time limits that were in effect in those two years, it indicated that substantial progress remained before the permanent time limits of the act can be met. For example, for cases subject to a 60-day arraignment-to-trial time limit, 96.6 percent compliance was reported. However, only 81.4 percent of these cases were brought to trial (or otherwise disposed of) within the 60-day limit that comes effective July 1, 1979. In some districts, the percentage was substantially lower. In addition, it was noted that several of the district plans commented that the effects of the act could not be fully known until the dismissal sanction comes effective, providing an incentive for defense lawyers to gate about time computations.

## S.D. CALIFORNIA HAS CLARIFIED HANDLING OF REGISTRY FUNDS

The Judges of the U. S. District Court for the Southern District of California have recently entered a general order which is intended to ensure that court orders for the deposit of registry funds in interest-bearing bank accounts will be observed and implemented. General Order No. 238, adopted by the Southern District of California on January 2, 1979, requires that all court orders for the deposit of registry funds in interest-bearing accounts shall contain the following provision:

"It is ordered that counsel presenting this order serve a copy thereof on the clerk of this court or his chief deputy personally. Absent the aforesaid service the clerk is hereby relieved of any personal liability relative to compliance with this order."

The Court's order is intended to avoid the increasingly frequent failure to implement court orders which require the deposit of certain money from the registry fund into an interest-bearing bank account.

Interest so accruing is meant for distribution to the parties upon the conclusion of the case; however, in those instances where the orders have not been properly brought to the attention of the clerk of the court or the financial deputy clerk, the orders are not implemented.

In several recent instances the parties seeking to be paid interest upon funds distributed by the court have brought administrative claims against the United States under the Federal Tort Claims Act or have sued the clerk for personal damages in the amount of the interest which should have accrued in conformity with the court orders.

The general order adopted in the Southern District of California explicitly places upon the attorneys for parties seeking the accrual of interest on funds deposited in court the obligation to personally serve upon the clerk or his financial personnel any court order which may be entered to this effect.

BOARD from p. 3

whose term has expired.

Judge Skopil was appointed to the U. S. District Court in 1972 and since 1976 he has been Chief Judge of this District. The Judge is a graduate of Willamette University where he earned his B.A. degree in 1941, and Willamette University College of Law, receiving his LL.B. in 1946. He has also attended the Harvard University Graduate School of Business.

Judge Skopil is no stranger at the Federal Judicial Center. He has made great contributions to Center-sponsored seminars, very recently as a lecturer at a

seminar for U. S. Magistrates. In addition, the Judge has served on the Judicial Conference Committee on the Administration of the Federal Magistrates System.

Judge Skopil commented, when he was advised of his election, that he felt "very privileged to have an opportunity to be of service to the public generally, and to the Judicial Branch in particular." And the Judge had prophetic words to add: "From the short time I have been on the bench I know we must look for other ways [to handle our cases] if we are to effectively meet our responsibilities."



# PERSONNEL

## CONFIRMATIONS

Phyllis A. Kravitch, U.S. Circuit Judge, (CA-5), Mar. 21  
 John G. Penn, U.S. District Judge, DC, Mar. 21  
 Abraham D. Sofaer, U.S. District Judge, S.D. NY, Mar. 21  
 Robert E. Keeton, U.S. District Judge, D. MA, Mar. 21  
 John Joseph McNaught, U.S. District Judge, MA, Mar. 21  
 David Sutherland Nelson, U.S. District Judge, D. MA, Mar. 21  
 Rya W. Zobel, U.S. District Judge, D. MA, Mar. 21

## NOMINATIONS

Robert M. Parker, U.S. District Judge, E.D. TX, Feb. 6  
 Harold Barefoot Sanders, Jr., U.S. District Judge, N.D. TX, Feb. 6  
 David O. Belew, Jr., U.S. District Judge, N.D. TX, Feb. 9  
 Martin F. Loughlin, U.S. District Judge, D. NH, Feb. 9  
 George E. Cire, U.S. District Judge, S.D. TX, Feb. 19  
 James DeAnda, U.S. District Judge, S.D. TX, Feb. 19  
 Mary Lou Robinson, U.S. District Judge, N.D. TX, Feb. 26  
 Norman W. Black, U.S. District Judge, S.D. TX, Feb. 26  
 Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, Mar. 1  
 Joyce Hens Green, U.S. District Judge, DC, Mar. 5  
 George P. Kazen, U.S. District Judge, S.D. TX, Mar. 8  
 William Ray Overton, U.S. District Judge, E.D. AR, Mar. 8  
 Bailey Brown, U.S. Circuit Judge (CA-6), Mar. 15

Harold Duane Vietor, U.S. District Judge, S.D. IA, Mar. 15  
 Paul G. Hatfield, U.S. District Judge, D. MT, Mar. 15  
 Donald James Porter, U.S. District Judge, D. SD, Mar. 15

## DEATHS

Carl A. Weinman, U.S. Senior Judge, S.D. OH, Feb. 5  
 William C. Frey, U.S. District Judge, D. AZ, Feb. 18  
 George H. Barlow, U.S. District Judge, D. NJ, Mar. 4  
 Herbert P. Sorg, U.S. Senior Judge, W.D. PA, Mar. 11

## REFORM from p. 2

of the circuit judicial councils, the governing administrative bodies in the eleven judicial circuits, making the councils smaller and including district judges in their membership for the first time.

**Interest on Claims and Judgments.** Ambiguity in federal law dealing with the payment of interest on claims prior to a court judgment would be clarified by this proposal. Where a defendant knew of his potential liability, interest would be awarded for a pre-judgment period where necessary to compensate the plaintiff for his losses or to avoid unjust enrichment of the defendant. Post-judgment interest rates would no longer be subject to varying state laws, but would be based on a nationally uniform rate. ¶¶

# GOVERNMENT CALENDAR

Mar. 23 Multidistrict Litigation Panel Hearing, San Francisco, CA  
 Apr. 18-21 Sentencing Institute (First, Fourth and D.C. Circuits), Research Triangle Park, NC  
 Apr. 23-25 Workshop for Investigators; Wichita, KS  
 Apr. 23-27 Advanced Seminar on Pretrial Services Offices; Louisville, KY  
 Apr. 24-27 Effective Productivity for Court Personnel; Atlanta, GA  
 Apr. 26-27 Public Hearing on Report and Tentative Recommendations of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts; U.S. Courthouse, Washington, D.C. Anyone interested in testing should contact Carl H. Imbler, General Counsel, Administrative Office of U.S. Courts. Telephone: (202) 633-6127.  
 Apr. 30-May 2 Seminar for Federal Clerks; Pittsburgh, PA  
 May 7-11 Advanced Seminar for Probation Officers; Wilmington, DE

## JUDICIARY from p. 4

considering broad problems affecting the district courts. It is appropriate now to formalize these practical working arrangements by restructuring the judicial councils to include some representatives of the district courts. ¶¶

## THE THIRD BRANCH

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## Bulletin of the Federal Courts

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APRIL, 1979

### SENATOR KENNEDY INTRODUCES JUDICIAL REFORM LEGISLATION

On March 15 Senator Edward M. Kennedy (D. Mass.) introduced comprehensive legislation to reform and restructure the federal courts. Known as the "Federal Courts Improvement Act of 1979," and cosponsored by Senator Dennis DeConcini (D. Ariz.), the proposals include the measures sent to Congress by President Carter on February 27 as well as a series of important additional reforms. (See *The Third Branch*, February 1979, p. 2).

In his Senate statement introducing the legislation, Senator Kennedy said he was "introducing the most comprehensive federal judicial reform legislation in recent history. This package of reforms—developed in close cooperation with the Department of Justice and the House of Representatives—would make long overdue changes in the structure and administration of our federal judicial system. The legislation is the culmination of many decades of debate over the nature and structure of the federal courts. . . . When read in conjunction with other legislation about to be processed in the Senate. . . this bill should be viewed as an important step in the direction of broadening access to the federal courts while improving the quality of our federal court system."

See REFORM p. 2

### A FORMER FEDERAL JUDGE TALKS ABOUT HIS NEW POSITION:

#### AN INTERVIEW WITH FBI DIRECTOR WILLIAM H. WEBSTER

FBI Director Webster, a former Judge of the United States Court of Appeals for the Eighth Circuit, recently agreed to an interview for *The Third Branch*, one of the first he has consented to since assuming his new position. Members of the Judicial Branch will be particularly interested in reading what the Director has to say about how he views the Bureau's work, some of which affects the work of the federal courts.

\* \* \* \*

**You have in the past mentioned you want to adopt an entirely new charter for the Bureau. Has this "charter" been finally adopted?**

The charter is my number one priority this year. Historically, Attorney General Charles J. Bonaparte ordered the creation of a Bureau of Investigation in 1908 to serve as an investigative arm of the Department of Justice. This order, coupled with occasional mention of the FBI in certain federal statutes, is all the FBI has ever had to guide its activities. Today, the Bureau is responsible for the investigation of violations of some 200 federal laws, but there is no charter. I believe that many of the problems that the FBI encountered during the past decade were attributable to the



William H. Webster

absence of a clearly defined mission. We operated on the assumption that whatever the President said [to do] we should do, because it was assumed that the president had inherent power to protect the national security.

Some people talk about the charter as being a way to prevent abuses. I think that would be an indirect consequence of a good charter, but that is not the purpose of a charter. The real purpose of a charter is to tell us what the American people want us to do and how they want us to do it. So the Bureau has taken an active role in the evolution of a preliminary draft. This bill is very close to being introduced into the legislative process.

UNIVERSITY OF ILLINOIS

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MAY 7 1979

LAW LIBRARY



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In addition to those proposals announced by the President, the bill contains provisions that would: Create a special U.S. Court of Tax Appeals; establish new procedures for disciplining federal judges; revise the present composition of circuit councils; make retirement rules for federal judges more flexible; allow the temporary assignment of justices or judges to other offices within the judicial branch; and permit certain federal appeals prior to the completion of a case in the district court. Details of these proposals are:

- **U.S. Court of Tax Appeals.** This proposal would create a new court with exclusive jurisdiction over all federal civil tax appeals. The court would consist of twelve existing federal circuit court judges to be chosen by The Chief Justice of the United States. No new judgeships would be created. The judges would sit in panels of not less than 3 and would serve on a rotating basis. A related proposal eliminates the trial jurisdiction of the Court of Claims over federal tax cases.

- **Judicial Discipline.** Title 28 U.S.C. §372 would be amended so that circuit judicial councils have the primary responsibility for regulating the conduct of the federal judges in that circuit. A broad range of sanctions would be available to the council, from private reprimand to a recommendation to the Judicial Conference of the United States that it advise the House of Representatives that impeachment proceedings are warranted. (See *The Third Branch*, March 1979, p. 1).

- **Circuit Councils.** This provision amends Title 28 U.S.C. §332 to provide that membership of each council consist of not more than seven circuit judges in regular active service, including the chief judge, unless there are fewer

than seven circuit judges in regular active service, in which case every circuit judge in regular service will serve as a member of the council. In addition to the circuit judges, not more than four district judges in regular active service are to be members. If there are fewer than seven circuit judges in regular active service on the council, the number of district judges is reduced accordingly, but at least two district judges must be on the council. Judges of the district courts will be represented by the chief judges of the districts.

- **Judicial Retirement.** This provision amends Title 28 U.S.C. §371(b) to implement the "Rule of 80," allowing retirement or senior status to be effectuated in any case where the age of the judge, when added to his years of continuous service, adds up to 80 or more. Current law requires that in order for a federal judge to retire or assume senior status, he or she must be at least 70 years of age and have served a minimum of ten years as a federal judge. The service requirement is retained in the proposal.

- **Temporary Assignment of Justices and Judges to Other Offices Within the Judicial Branch.** Title 28 U.S.C. would be amended by adding a new chapter—Chapter 14—to allow any retired justice of the United States, or any judge of the United States in active, senior, or retired status to be temporarily assigned to the position of Administrative Assistant to The Chief Justice, Director of the Administrative Office of the United States Courts or Director of the Federal Judicial Center. Vacancies created by the appointment of a judge in active status are to be filled by the President with the advice and consent of the Senate. The provision further provides that the official station of the three offices is the District of Columbia.

## DELAWARE STATE BAR SETS UP SPECIAL COMMITTEE ON COURTS

Chief Judge Collins Seitz (CA-3) has circulated to all circuit judges and all chief judges of the district courts in the Third Circuit, a release from the Delaware State Bar Association announcing the creation of a Special Committee on Complaints Concerning the Courts.

This special committee was constituted to meet objections from members of the Delaware bar that they do not have appropriate channels through which to communicate their views on matters involving both the bench and bar.

Chief Justice Daniel L. Herrmann of the Delaware Supreme Court and Chief Judge James L. Latchum of the U.S. District Court for the District of Delaware have had a common concern that members of the bar

See DELAWARE p. 4

When a judge in active service at the time of assignment vacates the office, he or she may resume former active service, or assume active service as a judge in the circuit of the District of Columbia. For the purposes of seniority and precedence, a judge who resumes active service will be considered to have been in continuous active service.

- **Appeal of Interlocutory Issues.** This provision will allow a new exception to the general rule that individual issues raised in the course of a federal district court proceeding cannot be appealed until a final judgment of the district court is rendered. This proposal would amend Title 28 U.S.C. §1292(b) to allow a court of appeals to permit an immediate appeal if it determines that an appeal is required in the interest of justice and because of the extraordinary importance of the case.



## SYMPOSIUM ON CIVIL CASE MANAGEMENT

The Winter, 1978 issue of *The Justice System Journal*, just released by the Institute for Court Management, is devoted entirely to articles on judicial management of the civil docket. The issue assembles for the first time materials on the history, theory, and practice of case management in both federal and state courts.

The volume opens with a "keynote" article by Judge Alvin

Rubin of the United States Court of Appeals for the Fifth Circuit, which lays out the rationale for judicial case management. Judge Rubin draws on such varied materials as the *The New Union Prayer Book* and Franz Kafka's *The Trial*, in addition to his own extensive experience as both a trial and appellate court judge.

Judge Rubin argues in support of judicial activism and discusses procedural tools which the judges have available to them to see that the judicial process moves efficiently and expeditiously. Other aspects of the case management process are taken up by H. Stuart Cunningham, Clerk of the U.S. District Court for the Northern District of Illinois. Mr. Cunningham's paper focuses on the general organizational tools available, including calendar management, and effective use of supporting personnel.

A paper by Professor Arthur R. Miller, based on a series of talks

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*The Third Branch*

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph F. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

## FEDERAL COURT LIBRARIANS MEET

Thirty-seven participants and three observers, representing each of the eleven circuits as well as district courts from as far away as Alaska, Hawaii and the Canal Zone, convened at the Federal Judicial Center March 19-21 for the second seminar for federal court librarians. The first such seminar was held in 1973.

The objectives of the seminar were to:

- Detail the functions, purposes, methodology of organization, and proposed activities of the Library Services Branch in the Administrative Office of the United States Courts;
- Furnish an in-depth analysis of the Administrative Office personnel policies and procedures involving federal court librarians;
- Provide an opportunity for the librarians to meet with officials and staff of the Administrative Office with whom they deal in performing their responsibilities and functions;
- Furnish detailed knowledge on developments in software and hardware on microforms, data bases, and systems;
- Furnish a forum for the exchange of new concepts,



Patricia A. Thomas

ideas, techniques, and the use of new technology by federal court librarians;

- Provide an understanding of the information resources available from the Library of Congress, Government Printing Office, Executive Branch Libraries and libraries of the federal courts.

Planning for the seminar did not begin until the release last year of the Federal Judicial Center's study, *Improving the Federal Court Library System* (See *The Third Branch* September 1978, p. 4) and the appointment of Patricia Thomas last September to be Chief of the

See LIBRARIANS p. 5



Librarians from the United States District and Circuit Courts photographed at the Dolley Madison House as they met with R. Glenn Johnson, Chief, Personnel Division, Administrative Office of the United States Courts.



## ANNUAL COURT OF CUSTOMS AND PATENT APPEALS CONFERENCE: MAY 9

Chief Judge Howard T. Markey has announced that the Sixth Judicial Conference of the United States Court of Customs and Patent Appeals will be held May 9, at the Sheraton Park Hotel in Washington.

The conference will bring together judges of the Court of Customs and Patent Appeals and the Customs Court, members of the Patent and Trademark Office boards, the International Trade Commission, officials of Treasury, Justice and the Customs Service, and invited members of the bar.

A *Judicial Talk Show*—a panel discussion with three U.S. district judges and three lawyers participating—will be featured during the Patent and Trademark Session; Multi-National Trade Negotiation is to be highlighted during the

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who encounter problems have not had, until now, any organized avenues to pursue when they feel they must complain. Cited by the Delaware Bar as an example: procedural matters which they feel will bring about "efficient and effective administration of justice."

Of special concern are those matters which sometimes involve the judges themselves, understandable a very delicate matter for the attorneys who must practice before them. Because they recognize this as a sensitive area of their work, the committee has assured that the confidentiality of the author of the complaint will be preserved to the best of their ability. In those instances where Chief Justice Herrmann or Chief


## NATIONAL JUDICIAL CONFERENCE SET FOR U.S. COURT OF CLAIMS

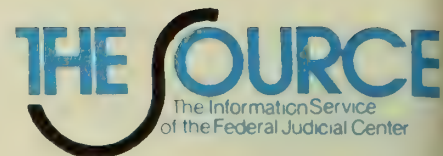
Traditionally the U.S. Court of Claims holds a one-day judicial conference of judges and lawyers every other year. This year their conference of judges and members of the bar will be held on May 17 at the Capital Hilton Hotel in Washington.

Formal programs are now being structured to include many areas affecting practice before the Court of Claims. Highlighted will be discussions of the Contract Disputes Act of 1978, the Civil Service Reform Act of 1978, and declaratory judgments in tax cases.

An afternoon symposium will be held on the proposal to combine the U.S. Court of Claims and the U.S. Court of Customs and Patent Appeals to be called a "United States Court of Appeals for the Federal Circuit." Also, under the proposal there would be

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Judge Latchum have determined that the matter cannot be dealt with on an anonymous basis, the Committee will notify the author of this determination and the attorney involved will then be consulted and his choices as to how to proceed further will be explained. In instances where the Committee has decided that there is *prima facie* validity to a complaint, they will refer the matter, without revealing the complainant's identity, to the Chief Justice or the Chief Judge for disposition. The author of the complaint will have the option of revealing his name if the Chief Justice or the Chief Judge determines that the problem cannot otherwise be properly investigated and adjudicated. If the complainant decides not to reveal his identity, the matter will be dropped. 



Publications are primarily listed for the reader's information. Those in bold face are available from the FJC Information Services Office.

The adversary character of civil discovery: a critique and proposals for change. Wayne D. Brazil. 31 Vand. L. Rev. 1295-1362 (Nov. 1978).

**Chilling Judicial Independence**, Irving R. Kaufman. 88 Yale L. J. (March 1979). A limited supply of reprints is available.

Future of the CCPA. Jack R. Miller. 60 J. Pat. Off. Soc'y 676-684 (Nov. 1978).

**Juror Utilization in the United States 1978**. AO 1979.

The negotiated guilty plea: a framework for analysis. Richard P. Adelstein. 53 N.Y.U.L. Rev. 783-834 (Oct. 1978).

A Proposal for a New Federal Intermediate Appellate Court. Daniel J. Meador. 60 J. Pat. Off. Soc'y. 665-675 (Nov. 1978).

Report to the President and the Attorney General. Vol. I & II. U.S. National Commission for the Review of Antitrust Laws and Procedures. GPO, 1979.

**Judicial Management and the Civil Docket [Symposium]**. 4 Just. Sys. J. 131-26 (winter 1978).

### LAW DAY, U.S.A.—1979

"Our Changing Rights" is the theme selected for the twenty-second annual nationwide observance of Law Day, U.S.A., traditionally held each May 1st.

The program was started as an activity of the American Bar Association, with state and local bar associations participating throughout the country.



LIBRARIANS from p. 3

newly established Library Services Branch.

Ms. Thomas has now visited in all the circuits to familiarize herself with any problems which may exist in the federal court libraries. Having completed this survey she has now made her first recommendations to the Director of the Administrative Office. They deal with structural and procedural matters and the personnel involved with the work of the libraries. The March seminar afforded Ms. Thomas a forum to explain some of these recommendations. Her presentation gave a positive tone to the seminar, especially that part dealing with improved procedures such as book procurement, closer ties to her own office, and greater participation and interest by the federal judges in all aspects of the library services.

Over 100 candidates were nominated to attend by chief judges of the circuit and district courts. Attendance at this seminar, however, was limited to full-time professional librarians. The response to the announcement of the seminar and subsequent discussions led to the formation of a committee of librarians which will plan a training course and seminar for nonprofessional librarians.

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ustoms session.

Attorneys attending may be admitted to the Bar of the CCPA 9:45 a.m. on May 9th. Those interested in applying for admission should contact George E. Hutchinson, the Clerk of the Court.

The Conference is accredited for continuing legal education requirements in the states of Florida, Iowa, Minnesota, North Dakota, Washington and Wisconsin.

### JUDGES GURFEIN, WEINER APPOINTED TO MULTIDISTRICT LITIGATION PANEL

Two new appointments have been made to the Judicial Panel on Multidistrict Litigation.

Consistent with his policy of rotating the Chairmanship of the Panel, The Chief Justice has named Judge Murray I. Gurfein of the Second Circuit to this position. He succeeds Judge William H. Becker of the U.S. District Court, Kansas City, Missouri.

Also named as a new member of the Panel is Judge Charles R. Weiner, of the U.S. District Court, Philadelphia.

The Judicial Panel on Multidistrict Litigation is composed of seven circuit and district judges from throughout the country. The Panel basically considers whether to transfer related multidistrict civil actions to a single district for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

### SUPREME COURT HISTORICAL SOCIETY HAS NEW EXECUTIVE DIRECTOR

Mrs. Elizabeth Hughes Gossett, the President of the Supreme Court Historical Society, has announced the appointment of Mrs. Betty Crites Dillon as Executive Director. She succeeds William H. Press, who resigned last month.

Mrs. Dillon brings to the Society a wealth of experience which has well prepared her for the important work of the organization during its nascent years. The past seven years she served in the Department of State and was head of many United States delegations to international conferences. Mrs. Dillon has also held the title of United States Minister-Representative to the International Civil Aviation Organization.

The Supreme Court Historical Society was founded in 1974 to

stimulate research, gather historic artifacts and encourage public understanding of the Supreme Court. The Chief Justice is Honorary Chairman of the Society, which now has a membership of over 3000.

Currently the Society is sponsoring the preparation of a Documentary History of the first decade of the Court, 1789-1800. The organization has co-sponsored a publication entitled *Magna Carta and the Tradition of Liberty*; and recently the Society collaborated with the Supreme Court in arranging the John Jay exhibit at the Court, already viewed by hundreds who have visited the building. The Society also publishes a Yearbook containing articles by historians and legal scholars.

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at Federal Judicial Center workshops, details the unavoidable management responsibilities of the trial judge in class actions. Miller argues that while a judge may have the option to remain passive in most types of litigation, the class action judge must serve throughout as an active systems director, and has affirmative obligations to intervene.

Additional articles included in this publication are: *Civil Case Delay in State Trial Courts*, by Thomas W. Church, Jr.; *Judicial Role and Case Management*, by David Neubauer; and *Case Management in Federal Courts: Some Controversies and Some Results*, by Steve Flanders. Mr. Flanders, who is on the research staff of the Federal Judicial Center, was editor for this special issue.

This symposium will be distributed to newly appointed federal judges by the Federal Judicial Center. A limited number of copies is available from the Information Services Office.



## AN INTERVIEW WITH FBI DIRECTOR WILLIAM H. WEBSTER

from p. 1

Inspector John Hotis of my staff has been the principal architect of the charter. He also is chief negotiator with the Department of Justice concerning matters relating to the charter. Inspector Hotis holds a law degree from Duke University Law School, a Master's and Doctorate from Yale, and a Fellowship from Harvard. He possesses a fine intellect, has a sensitivity to First Amendment problems, and has had a great deal of experience in the Bureau's intelligence field. He knows the problems of the past and with his help, and the help of a good many others, we have produced a draft charter of which I am very proud.

In my view, the proposed charter addresses every major question that has been raised and does so with sufficient specificity. It also provides for investigative guidelines with respect to the more detailed problems—the types of things that might change from time to time. These guidelines will be promulgated by the Attorney General in order to insure oversight of the Bureau. Investigative (operational) procedures will be left to the Director of the FBI, as far as possible, so that the Bureau's investigations, which are evolutionary in nature, will not be locked into an inflexible system. Technological capabilities are so much different now than they were five or ten years ago. We haven't any way of forecasting what kind of work we will be doing in the future, and so operational aspects ought to be my responsibility and I ought to be accountable for them.

The charter will address basic First Amendment principles, particularly those involving investigations of groups engaged in First Amendment activities. Normally, investiga-

tions should be governed by guidelines rather than by statute. I don't think we need a charter to tell us how to conduct a surveillance.

**With a limited number of agents and the vast jurisdiction now encompassed by the Bureau, do you find you must adopt a policy establishing priorities? Do you have plans to put special emphasis on certain types of crimes?**

Yes, priorities have been established and they are operational at this point. Our three principal priorities are foreign counterintelligence, white-collar crime, and organized crime. Antitrust and civil rights matters, along with personal and general property crimes, make up our second tier of priorities. And at a lowest priority we have placed the fugitive, domestic security-international terrorism, and general government crimes programs. With respect to the domestic security program, I would like to point out that it has been assigned a low priority because it occupies only three percent of our total resources. The international terrorism program is part of the domestic security program and when we have any terrorist activity in the country it becomes just as important as anything else that we do in the FBI.

With respect to the white-collar and organized crime programs, we have attempted to determine the scope of a particular criminal enterprise or activity. We then target our efforts toward top level criminals rather than those who are involved in street level crime. We have committed over a third of our resources to these two important areas.

In order to monitor our efforts in all of our programs, we have a computer system which measures the application of our resources to specific programs.

This system also measures our inventory of work in each program area and records our accomplishments. These accomplishments are now more realistically presented as felonies, misdemeanors, actual recoveries and potential recoveries. In the past, statistics were compiled for the purpose of justifying appropriations. This method came under sharp criticism because it lumped together such items as recoveries and losses prevented so that these items could not be assessed properly. In the design of our computer program, we made certain that our statistics were properly broken out so that they could be clearly assessed. This information is shared with all of the Bureau's field commanders. They are provided with statistical information relating to their own offices, as well as information concerning overall field performance. In this manner we are able to see just how effective we are in moving into priority work.

With the establishment of work priorities we have been able to achieve our next goal of upgrading our work in each priority program through what we call the quality over quantity case approach. Taking white-collar crime as an example, we are not as interested in investigating a \$1,500 bank embezzlement as we are in a bank embezzlement of over \$250,000.

Another example can be drawn from the area of public corruption, which is not a specific program in itself but does involve white-collar type crime committed by a public official. In February of last year we had 574 cases under investigation; last Fall this number rose to 890, and at the present time there are over 1,000 such investigations pending. These cases involve a variety of public officials



cluding police chiefs, legislators and governors. It is an area that we take very seriously and move into with the most of care because reputations are very fragile. We believe that most public servants are honest and want us to clean house of those persons who break the public trust and adversely reflect upon their honest colleagues.

Another example of the impact of setting investigative priorities concerns our responsibilities toward the banking community. We found that historically three times as much money goes out the back door of a bank each year as is taken out the front door in bank robberies. Thus, it makes more sense for the Bureau to develop capabilities in the direction of bank fraud and embezzlement investigations through the use of agents knowledgeable in the field of computer fraud. We have found that banks throughout the nation have been victimized through computer manipulation, sophisticated accounting techniques, embezzlement, schemes involving the setting up of phony loan sources, and the like. These techniques used by white-collar criminals are wide ranging and we are striving to keep current in this area. Fraud against the government is considered to be a major white-collar crime and the General Services Administration frauds have required the investment of a significant portion of our white-collar crime investigative resources.

We don't want to make any extravagant claims, but I believe we are making headway in our efforts against organized crime. In the case involving the Longshoremen's investigation on the East Coast we have had over 80 indictments to date. These include shippers, warehousemen, and labor leaders. The charges stem from systematic programs of extortion and bribery which have been going on for years all

up and down the East Coast. And the consumer has been paying the bill.

This major effort to clean house has required the use of over 150 Special Agents, many of whom acted in undercover roles for over a full year. It has been highly coordinated and has involved over 20 FBI field divisions, as well as a number of United States Attorneys and Strike Force Attorneys. We believe this type of crime (organized and white-collar) is on the increase, and the FBI has committed two-thirds of our top priority programs to it because the work is there. Further, it is important work and meets my test. It is work that the FBI should be doing because we are well equipped to handle the long-term type of investigations of intensive criminal activity required in many of these cases.

Investigation of bank robbery matters continues to be an area on which reasonable minds differ. My answer has been an ad hoc approach in each community. I have instructed our Special Agents to confer with local police departments to determine what kind of capability exists in each department so that a joint system of response can be worked out for each local area. We will not desert bank robberies; however, our budget in this area mandates that we reduce our overall effort.

The FBI also continues to meet its responsibilities in the area of bank robberies and other matters in which we have concurrent jurisdiction with local authorities through a variety of programs. Each year we train approximately 4,300 hand-picked local lawmen in a variety of programs at our training facility located at Quantico, Virginia. We also provide a highly sophisticated program called the National Executive Institute for major city chiefs of police. Through these courses and through our police training instructors who are

assigned in each of our field offices, we will be able to assist in upgrading the capability of local law officers to conduct bank robbery investigations. In many cities this capability is first-class and police agencies are eager to take on the full responsibility for these cases. One interesting aspect of this area is the difference in prosecutive attitudes from jurisdiction to jurisdiction. For example, the U.S. Attorney in San Francisco does not want to prosecute bank robberies while the U.S. Attorney in Los Angeles wants to prosecute all of them. Thus, the Bureau cannot be inflexible in handling these cases and we have to accommodate local considerations in order to make this program viable.

**It appears that you are putting a lot of your resources into investigations of white-collar crimes. Is this because this type of crime is on the increase or is there more concern for this today?**

In today's society, with its high level of education, we have persons who are able to apply acquired skills to contrive illegal manipulative schemes from which they net large sums of money. These clever techniques are increasingly being applied in criminal enterprises. One of the major enforcement tools we now have, and which the courts are seeing used more frequently in criminal enterprise cases, is the Racketeer Influenced and Corrupt Organization Statute. This law carries a 20-year prison sentence, a \$25,000 fine, and a portion of it allows for the forfeiture of the enterprise. So when we find an instance in which organized crime infiltrates a legitimate business we are able to go after the whole business and seize the fruits of the crime. This law has been used effectively in a number of cases including one involving arson for profit.



INTERVIEW from p. 7

One interesting aspect of this legislation is that the enterprise doesn't have to be a traditional business enterprise such as a corporation. For instance, it also can be a prosecuting attorney's office if, in fact, it is being operated corruptly in violation of state or federal laws. This is an important tool which we will utilize more and more.

**What trends do you see as a result of your shift in priorities?**

On a recent visit to San Francisco I was invited to lunch by my former colleagues in the federal judicial system and this was one of their questions. They wanted to know what types of cases they could expect to see in their courtrooms as a result of the Bureau's realigned priorities.

I told them that I think there will be fewer of the more traditional cases such as Dyer Act cases. I assured them we would continue to pursue commercial auto theft rings, and I also stated that they will see fewer bank robbery cases in many of their jurisdictions.

What I believe they will see with increasing frequency are criminal enterprise or multiple party cases. These matters can involve white-collar and/or organized crime. We are more effective in our investigative efforts against criminal enterprise or multiple party cases. These matters can involve white-collar and/or organized crime. We are more effective in our investigative efforts against criminal enterprise crimes, thus these are the types of cases which will be coming to the forefront. Federal judges should be prepared to expect problems in the areas of discovery, trial severance and related matters.

Additionally, one of the things that I am concerned about, and I know the judges are concerned about also, is the current and vitally important problem of gray

mail. In a gray mail situation a government employee who is on trial requests to see highly classified information which he states is essential to his defense effort. Here the government is placed in the position of either dismissing the case against the employee or disclosing national secrets.

Another aspect of this problem relates to the FBI's utilization of undercover agents and/or informants in long-term undercover assignments. I am deeply concerned that when these types of cases (undercover/informant) reach the point of adjudication the defense will demand to know the names of our informants and other related information. Their claims that such data are essential to the defense of the person on trial could place the Government in the position of revealing sensitive or classified information. This is part of the problem the FBI is now experiencing with respect to the Socialist Workers Party. With increasing frequency, judges across the country are becoming more concerned with motions such as the ones I have described. The Government continues to resist disclosure of informants' identities, as well as classified material, and there should be some sort of solution to this problem, short of dismissal of a case, that would be consistent with our public trial system.

**Aren't there instances where the judge can look at it *in camera*?**

There are some instances of this sort; however, they are being questioned by both defense counsel and members of the press who feel that *in camera* examination detracts from the public character of a trial. I hope that The Federal Judicial Center will take an active role in studying this problem.

**Aren't there areas where three acts in particular overlap in applicability: the Jencks**

**Act, the Privacy Act, and the Freedom of Information Act**

The Jencks Act, considered separately from the Jencks decision, says that witness statements must be made available only after the witness has testified. My only comment in this regard is that the court like to press for early disclosure of this kind in order to keep the trial moving. When I was on the Criminal Rules Committee resisted any attempt to modify the rules in this area because Congress had spoken on them. Congress in effect amended the Jencks opinion to say that statements do not have to be disclosed until after the testimony of a witness unless the Government wishes to yield in the interest of keeping the trial moving along.

I have some firm opinions on the Freedom of Information Act. In principle, this is a fine law and has been used effectively in many instances. However, there are effects which Congress did not contemplate when enacting this legislation. Today, we have developed sufficient data to say with certainty that the Act has had an adverse impact upon law enforcement, particularly in the area of informant development. People who supplied vital information to law enforcement in the past can no longer be persuaded to do so as they believe their identities can no longer be kept confidential. Even in the area of federal judgeships, federal judges no longer want to discuss potential candidates for the bench because they do not believe that the information they would supply can be kept confidential. I have spoken publicly and testified before Congress in an effort to get Congress to face up to the fact that the benefits of this Act are now far outweighed by the detriments. Congress should amend the Freedom of Information Act. Some type of reasonable solution should be developed which would limit



access to confidential information and informant identity information. There should also be some kind of moratorium on access to closed law enforcement files. Information contained therein could be disclosed at a later time when it is no longer critical and the likelihood of damaging an informant by revealing his or her identity is thereby reduced.

The FBI currently receives about 18,000 Freedom of Information Act requests each year. Sixteen percent of all such requests come from prisoners, and the total cost of our operation to the taxpayer is between eight and nine million dollars per year.

**The prisoners are asking for information on their files?**

Yes, and most of them are clearly seeking to identify the person(s) who put them in jail. They also share information they have obtained with other prisoners who might have been involved in the same crime. We have analyzed a number of these requests and found that it is possible to identify an informant without too much trouble.

The pressure on the Bureau for disclosure has been so intense, and the latitude for not disclosing information has been so limited, that we find ourselves excising some words in a sentence and not others. This means, for example, that the recipient of documents can look at excised words and can accurately develop information which should not be disclosed by merely guessing the number of letters in excised words. Further, it is not at all difficult to identify someone who has provided derogatory information concerning another when the requester and the individual providing the information are among a handful of persons who have knowledge of the information. FBI employees who are charged with the duty of excising documents cannot

know what other information is available to the person making the request. Therefore, we want broader authority to excise any information that has anything to do with informants. In this manner, we can rebuild the confidence that informants once had in the ability of the FBI to protect their confidentiality.

**Do you anticipate the Administration will recommend some changes to Congress?**

I believe that we are very close to having changes recommended. There is a joint task force working on it now, and there are members of Congress who are receptive to reviewing new proposals. Of course, any recommendations will have to be reviewed by the Administration, and I believe changes can be made without damaging the underlying principle which prompted Congress to pass the Freedom of Information Act. I don't want to be labeled as one who opposes freedom of information; I simply say that we have had enough time to see how well this law is working, and now we can fine tune the Act to protect interests that are just as important as the interests underlying the Freedom of Information Act. The large volume of requests we get comes from a relatively small number of persons; and although the Act serves a useful purpose, there are other ways of assuring the public that their agencies are not lying to them and are doing the work expected of them. Congressional oversight and accountability are ways in which agency operations can be monitored and controlled.

**Last October Congress passed Public Law 95-511 which established a special federal court to consider and then grant or deny applications for electronic surveillance within the United States. These applications would be first filed with one of the senior**

**U.S. district judges; and, when review is sought from a denial, appeal could be made to a special review court of three federal judges, with a final review possible on writ of certiorari to the U.S. Supreme Court. Will this delay cause you any problems?**

I certainly hope not. The use of electronic surveillance in foreign counterintelligence (FCI) cases demands a different standard of probable cause than that which is necessary in criminal type investigations. The procedures are clear in FCI matters and it is the judge's responsibility to decide on whether a person is an agent of a foreign power. The judge does not have to decide whether or not probable cause exists in these cases. This fact is certified by the Attorney General and the Director of the FBI. I do not anticipate that there would be any cases of this nature that will give us trouble in obtaining the necessary authorization to employ electronic surveillance techniques. In domestic security cases we use the regular court-ordered system (Title III) when it is deemed necessary to utilize electronic surveillance. There are no domestic security wiretaps currently in operation by the FBI.

**TAPES ON CIRCUIT JUDGES CONFERENCE TO BE AVAILABLE**

Sessions of the two conferences for federal appellate court judges — one in Los Angeles last January and one in Atlanta in March — were recorded on audio/video tapes. After editing and reproduction these tapes will be available on loan to federal judges through the FJC Continuing Education and Training Division.



## DOJ calendar

Apr. 26 Board of Editors Meeting, Manual for Complex Litigation; St. Louis, MO  
 Apr. 27 Multidistrict Litigation Panel Hearing; San Francisco, CA  
 Apr. 27 Judicial Conference Advisory Committee on Bankruptcy; Washington, DC  
 Apr. 30-May 2 Seminar for Fiscal Clerks; Pittsburgh, PA  
 May 3-4 Metropolitan Chief Judges Conference; San Diego, CA  
 May 6-9 Fifth Circuit Judicial Conference; Atlanta, GA  
 May 7-9 Seventh Circuit Judicial Conference; Chicago, IL  
 May 7-11 Advanced Seminar for Probation Officers; Wilmington, DE  
 May 8-9 Workshop for District Judges (Seventh Circuit); Chicago, IL  
 Mar 7, 10, 11 Management Program for Executives; Chicago, IL  
 May 9 Judicial Conference, U.S. Court of Customs and Patent Appeals; Washington, DC  
 May 9 Workshop for District Judges Sixth Circuit; Detroit, MI  
 May 9-12 Sixth Circuit Judicial Conference; Detroit, MI  
 May 14 Judicial Conference Subcommittee on Federal Jurisdiction; Washington, DC  
 May 15-18 Effective Productivity for Court Personnel; Philadelphia, PA  
 May 17 Judicial Conference, U.S. Court of Claims; Washington, DC  
 May 20-22 District of Columbia Circuit Judicial Conference; Williamsburg, VA

May 21-23 Seminar for Fiscal Clerks; Chattanooga, TN  
 May 21-25 Advanced Seminar for Pretrial Services Officers; St. Louis, MO

### May 22-23 First Circuit Judicial Conference; Nantucket, MA

May 22-25 Effective Productivity for Court Personnel; New Orleans, LA

May 24-25 Workshop for District Judges (Eighth and Tenth Circuits); Santa Fe, NM

May 25-28 Annual Conference of Federal Judicial Secretaries Association; Hotel Warwick, New York, NY

### May 26-28 Second Circuit Judicial Conference; Buck Hill Falls, PA

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## PERSONNEL

### NOMINATIONS

Charles B. Winberry, Jr., U.S. District Judge, E.D. NC, Mar. 1979  
 Frank M. Johnson, Jr., U.S. Circuit Judge for the Fifth Circuit Court of Appeals, Apr. 2

Dolores Korman Sloviter, U.S. Circuit Judge for the Third Circuit Court of Appeals, Apr. 4

Cornelia G. Kennedy, U.S. Circuit Judge for the Sixth Circuit Court of Appeals, Apr. 9

Richard L. Williams, U.S. District Judge, E.D. VA, Apr. 9

### DEATH

John Biggs, Jr., U.S. Senior Circuit Judge (CA-3), April 15

COURT OF CLAIMS from p. 4

established a new Article I court to be called the "United States Claims Court."

Those interested in attending should contact Frank T. Peartree, Clerk of the U.S. Court of Claims, 717 Madison Place N.W., Washington, D.C. 20001. Mr. Peartree's telephone number is 633-7257.

This conference has been planned to qualify "continuing legal education" which is now required in some states as a condition of retention of bar membership.

### THE THIRD BRANCH

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### THE FEDERAL JUDICIAL CENTER

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## FIRST CLASS MAIL



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## Bulletin of the Federal Courts

VOL. 11, No. 5

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MAY, 1979

### New Release:

#### REPORT ON WORD PROCESSING AND ELECTRONIC MAIL

In the Fall of 1977, at the request of the U.S. Court of Appeals for the Third Circuit, the Federal Judicial Center undertook a study to evaluate the impact of word processing and electronic mail on the appellate process. The major research questions were:

Does federal appellate workload justify the use of word processing or electronic mail equipment?

• How would the impact of these technologies improve the efficiency in expediting the processing of appeals?

• How would the impact of these technologies improve the efficiency in the drafting and productivity of opinions?

• What impact might these technologies have on secretarial performance and productivity and on judges' and law clerks' performance and work styles?

• What impact would the technologies have on reducing time to distribute and review draft opinions among court members?

*The Impact of Word Processing and Electronic Mail on United States Courts of Appeals*, a report which describes this evaluation and presents the results, is now available from the Center's Information Services Office.

See REPORT p. 2.

#### AN INTERVIEW WITH SENATOR HOWELL T. HEFLIN OF ALABAMA

Senator Heflin, a former Chief Justice in the State of Alabama, has been a leader in court reform movements, in his state and nationally, for the past several years. As a director on the board of the National Center for State Courts the Senator played a prominent role in guiding this organization through its nascent years.

He has spoken firmly and he has spoken often in defense of the state courts and urged better support for them, financially and otherwise, but especially through LEAA funding.

The background and personality of Senator Heflin bring new dimensions to the work of the Senate Judiciary Committee and as the Chairman of the newly constituted Subcommittee on Jurisprudence and Governmental Relations, he will undoubtedly be making many proposals directly related to the federal courts. Set forth below are some of his initial thoughts as he takes on this important work.

**You were recently appointed Chairman of a new subcommittee—the Subcommittee on Jurisprudence and Governmental Relations. Do you have some immediate plans for this subcommittee?**

Yes, as its name indicates, this subcommittee would have a broad range of activity. Our plans call for the subcommittee to make an examination of the relationship of the federal judicial branch with other units of government.

In such examination we plan to study the entrance into and the exit from the judicial system. While we will make every effort not to conflict with the jurisdiction of other subcommittees, relationships between courts and administrative agencies and correctional units of government will be studied. The relationship of courts with juvenile justice systems may be one of the subcommittee's



Howell T. Heflin

inquiries. A study of federal and state judicial relations may be undertaken. The possibility of a federal assistance program to state courts looms on the horizon. An inquiry into the relationships between the Administrative Office of the United States

See INTERVIEW p. 4



REPORT from p. 1

Ten judges and several administrators located in six cities in the Third Circuit were each provided a word processing system containing a telecommunications capability. The Federal Judicial Center developed a special computer software program to give each Third Circuit user access to a centralized "electronic mail post office" system on the Courtran II computer.

Several research instruments, including typing surveys, opinion circulation surveys, and appellate case tracking surveys were completed during a 1977-78 demonstration project to evaluate the impact of these technologies upon the Court of Appeals for the Third Circuit.

Among the general findings from the study—strongly supporting permanent installation of word processing equipment, but providing inconclusive evidence for the permanent installation of electronic mail—are:

- Word processing technology is cost beneficial for the Court of Appeals. The equipment decreases the cost of preparing court opinions; allows better utilization of support personnel; increases judges productivity; and speeds the production and dissemination of draft and final opinions.

- Word processing equipment increases secretarial productivity by 200-300% and decreases the number of typing hours by half.

- Word processing decreases the time required to prepare written opinions. The report documents a 52% reduction in the time required by the court to prepare and issue per curiam opinions and a 25% reduction in the time to prepare signed opinions.

- Electronic mail reduces by 75% the time for the court to exchange draft opinions, but does not reduce the time a court

## SPEEDY TRIAL ADVISORY SENT TO DISTRICT CHIEF JUDGES

Speedy Trial Advisory Number 27, *Inability to Comply with the 60-day Limit because of Congested Calendars; Procedures for Establishing Judicial Emergencies*, has been distributed to chief judges of the district courts by the Administrative Office. The advisory was issued because the Speedy Trial Act becomes fully effective July 1, 1979. On that date the sanction for failure to meet the time limits — dismissal of charges — then becomes effective.


18 U.S.C. § 3174 authorizes suspension of the 60-day limit from arraignment to trial if a district court is "unable to comply...due to the status of its court calendars." The procedural steps involved in obtaining suspension are set out in the statute as follows:

- The chief judge must seek the recommendations of the planning group before applying for a suspension.

- The chief judge may then apply to the judicial council of the circuit for a suspension.

- The judicial council must evaluate the capabilities of the district and the availability of visiting judges from within and outside the circuit, and make any recommendations it deems appropriate to alleviate congestion.

- If the judicial council of the circuit finds that no remedy for such congestion is reasonably

takes to review an opinion. In addition, electronic mail is substantially more expensive than the regular U.S. Postal Service, but substantially cheaper than either facsimile transmission or private express delivery services. 

available, it may apply to the Judicial Conference of the United States for a suspension. The advisory suggests that such judicial council applications be made not later than June 12.

- If the Judicial Conference of the United States finds that the calendar congestion cannot be reasonably alleviated, it may grant the suspension. This authority has been delegated by the Judicial Conference to its Executive Committee. Applications should be addressed to William E. Foley in his capacity as Secretary to the Conference.

Although the contents and forms of applications have not been prescribed the advisory states that the following matter should be covered at a minimum:

- The effective date of the requested suspension.

- The time limit that would apply during the period of suspension. Section 3174(b) provides that this may not exceed 180 days.

- The requested duration of the suspension. The duration may not exceed one year.

- A statement of the reasons for concluding that a suspension is warranted and that the particular time limit requested is appropriate. If the suspension is granted by the Judicial Conference, a report setting forth the "detailed reasons" for the suspension must be filed by the Administrative Office with Congress.

- A statement of the resources that would be required for the district to comply fully with the Speedy Trial Act, with the reasons for the conclusion reached.

- The text of the amendment to the district court's speedy trial plan that would be required to effectuate the suspension.

The advisory notes that §3174 does not apply to the 30-day time limit from arrest to indictment and that there is ambiguity



## IN-COURT ORIENTATION PROGRAM DESIGNED FOR NEWLY APPOINTED DISTRICT JUDGES

An in-court orientation program has been designed to assist new district judges in becoming familiar with the broad range of responsibilities they assume as they enter the federal court system. It will be carried out in cooperation with their chief judges.

The program was developed by the Board of the Center and was the direct responsibility of an "In-Court Orientation Committee" consisting of the three district judges who serve on the Board.

The purpose of this new program is not planned as a substitute for orientation programs already in place in the various districts; rather, the Committee's hope is that this new Center program can serve as an auxiliary tool in helping each district structure its program to assist new judges through assistance by experienced judges. The program is subject to adaptations because of the varied backgrounds and prior experience of the new judges. For example, a state trial judge changing to a federal trial court may want to supplement his particular needs with orientation different from that of a judge coming into the federal system directly from private practice. A suggested checklist has been made up to assist the

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## The Third Branch

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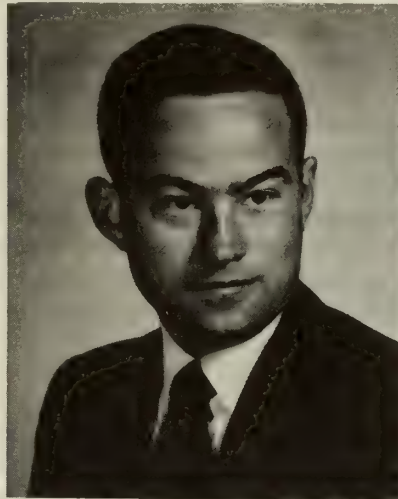
### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

## JUDICIAL FELLOWS CHOSEN FOR 1979-80

Gary J. Aichele, Philip L. Dubois and Donald P. Ubell have been selected as Judicial Fellows for the 1979-80 fellowship year by the Judicial Fellows Commission. The three will serve at the Supreme Court, the Federal Judicial Center, and the Administrative Office of the U.S. Courts, respectively.



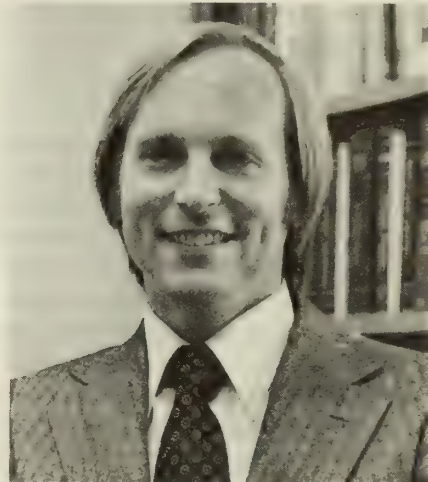
Gary J. Aichele

Mr. Aichele is a graduate of the law school and a Ph.D. candidate in Government at the University of Virginia. His dissertation, *Consensus to Crisis: Realism and American Jurisprudence in the Twentieth Century*, will be completed by the Fall of 1979. The Society of Fellows at Virginia selected him to be a Junior Fellow in Government for 1977-78 and a 1978-79 Forstmann Fellow.

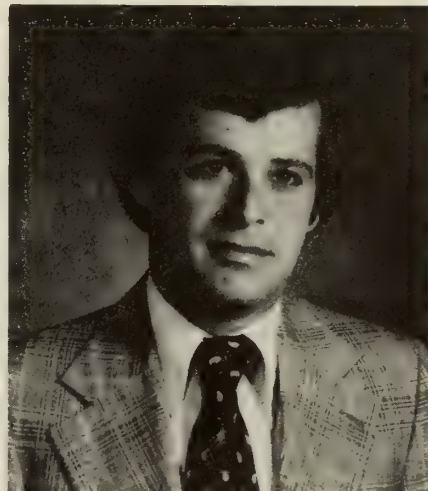
While at the University of Virginia, Mr. Aichele has been an instructor and teaching assistant in Government and senior research assistant to the University legal advisor. In addition to his work as a doctoral candidate, he is currently Director, Virginia Status of Students.

As an Assistant Professor of Political Science at the University of California, Davis, Mr. Dubois teaches a wide variety of subjects in the field of public law. In 1978 he was the recipient of the American

Political Science Association's Edward S. Corwin Award for the best dissertation in the country in the field of Public Law. His dissertation was titled, *Judicial Elections in the States: Patterns and Consequences*. One of his research projects currently in progress is an analysis of the selection of trial court judges in California for the Institute of Governmental Affairs at the University of California. An additional study is an analysis of the impact of the creation of an intermediate court system in Wisconsin at the University of Wisconsin Law School. Mr. Dubois received a Ph.D. in Political Science in 1978 from the University of Wisconsin.



Philip L. Dubois



Donald P. Ubell

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## AN INTERVIEW WITH SENATOR HOWELL HEFLIN OF ALABAMA

from p.

Courts and the General Services Administration, including planning for new courtrooms and physical facilities when new judgeships are created, is on the agenda.

Several years ago Chief Justice Warren Burger recommended that a judicial impact note accompany new legislation giving new rights and causes of action to individuals. His suggestion concerning a judicial impact note was broad enough to include any impact on the workload of the federal courts. I think his suggestion was a great one and I would like for this subcommittee to start working on a mechanism by which the impact of proposed legislation on the federal judicial system could be measured. It seems to me that some formula or measurement standards should be created to calculate the impact of proposed legislation on the judicial system. For example, some type of measuring device on additional judgepower should be formulated whenever proposed legislation would create new causes of action or give new rights to individuals.

**Another example is the Speedy Trial Act which had a tremendous impact on the federal court system.**

Yes, I am of the opinion that if an impact study of the proposal which created this act had been undertaken at the time the legislation was pending before Congress, then the act could have been written in a manner to prevent many of the ills that have resulted from such legislation.

**What progress have you made in organizing your subcommittee?**

The funding for the subcommittee has just been recently approved. We are now in the process of acquiring staff.

Studies are now under way with regard to a mechanism to calculate the judicial impact of legislation which creates new rights and causes of action. Preliminary work is being done in the field of federal-state judicial relations and a program of federal assistance to state and local courts.

**You were very instrumental in keeping the State-Federal Judicial Council in Alabama functioning. Do you think these councils are working effectively?**

The State-Federal Judicial Council was the brainchild of Chief Justice Burger and in my opinion it has been very effective. In my home state of Alabama, the Council has been most productive in eliminating areas of abrasion between the two court systems. In Birmingham, the Council has produced a written policy of understanding on many areas of previous conflict.

I think the work of the councils would be further improved by the delegation of staff from both the federal and state levels to work part-time on these problems and more frequent meetings of the councils.

**Have you had a chance to formulate any conclusions about the proposal to abolish diversity jurisdiction?**

I have been studying this issue very carefully. I think the concept of diversity abolition is basically sound because state courts should try cases arising under state laws. However, there may be a constitutional issue since the U.S. Constitution does provide that the judicial power of the United States is extended to controversies between citizens of different states. Complete abolition may be a problem.

There is also the problem of

local bias against nonresidents. In my judgment, local bias against nonresidents exists in every state of the nation. If diversity jurisdiction is abolished or substantially reduced, I would like to see a system worked out where nonresidents would have the right to a change of venue in the state courts. It would be desirable if diversity jurisdiction were abolished that a uniform liberal change of venue statute be adopted by each state so that a nonresident would have the right to change the venue in the state court to another location but within geographic limitations. However, from a pragmatic viewpoint, to get 50 states to adopt such legislation at the same time is undoubtedly an impossible task. Considerable discussion is being undertaken in informal conversations with members of the Judiciary Committee and other interested parties as to alternatives of how a nonresident would have the right of a change of venue in state courts.

There is another area of concern about diversity abolition, and that is multiple district litigation arising out of mass disaster accidents such as airplane crashes. Where the jurisdiction of the federal courts for such cases is based on diversity, it would seem to be highly desirable to keep these types of cases in the federal system.

While I have not made up my mind completely on the diversity abolition issue, I want to explore fully the possibilities of reducing diversity jurisdiction as opposed to its abolition, of granting rights to nonresidents to obtain a change of venue in state courts and of adding provisions dealing with mass disaster multidistrict litigation.



There is pending legislation which would expand the jurisdiction of magistrates within the federal system. Do you favor this legislation?

I voted for the bill after substantial changes were made and after language was inserted in the bill calling for a study of the magistrate system by the Judicial Conference of the United States.

Let's look at what has happened with magistrates. Over approximately the past eleven years the federal district court has been transformed from a one-tier trial court to a two-tier trial court which many judicial architects believe is inferior from a structural standpoint. This patch-on approach has all of the sins of duplicative and overlapping duties with district court judges, but its greatest malaise is its complete lack of any degree of uniformity. An understanding of how state courts got into a position of needing reform would be helpful. One of the major reasons state court systems had to be reformed was because of the complete lack of uniformity. When the movement for state court reforms was instituted, the evils that were generally pointed out were varying and different local rules, practices, procedures, varying jurisdictions and irrational, duplicating and overlapping courts of various kinds. An analysis of how the state courts got into this horrible condition will reveal that the key arguments used to justify the lack of uniformity were "experimentation," "flexibility," "adaptability to local needs," and "expediency." The proponents of the so-called reform movement for federal courts are now using the same key words to justify the varying, different overlapping use of magistrates in the federal courts. Uniformity is considered to be the polestar of court reform. The evangelism for the

states to adopt the Federal Rules of Civil Procedure centered around the need for and benefits of uniformity.

Testimony before the Judiciary Committee of the U. S. Senate revealed that before the passage of the Omnibus Judgeship Act there were 196 full time magistrates as compared to 399 district court judges or a nationwide ratio of one magistrate to every two district court judges. With an increase of 117 district court judges and the expansion of the powers of magistrates, it is reasonable to assume that the number of full time magistrates will substantially increase. Magistrates are now a vital segment of the federal judicial system. There can be little doubt but that the magistrate system should be structured from an architectural basis.

Hopefully, the study to be conducted by the Judicial Conference will involve an architectural approach towards structuring the magistrate system rather than the present patch-on, crazy-quilt-of-duties approach. At least magistrates should be given a decent title. The word "magistrate" is in itself demeaning. In the minds of most Americans it is associated with the evils of the Justice of the Peace system.

**The Nunn/DeConcini bills which have been introduced would set up procedures to discipline, or censure, or suspend federal judges other than through the impeachment process. Do you favor any of these proposals?**

Almost every state that has gone through a judicial modernization effort or judicial reform movement concluded that this had to be done by way of a constitutional amendment. All of the proposals pending in Congress are on a legislative basis. The language of the federal Constitution dealing with "good behavior" is enough, in

my judgment, to raise a serious constitutional issue as to whether or not any type of disciplinary commission can be created without a constitutional amendment. That's a big concern to me. My feeling is that there is a need for the disciplinary commission approach. I think the cumbersome and ineffective method of removal by impeachment should be changed.

**You have recently expressed opposition to any move toward setting up compulsory arbitration procedures in the federal system. Would you expand on that?**

Of course. I'm utterly opposed to compulsory arbitration and the Court Annexed Arbitration Bill. My opposition can be broken down to three areas.

First, on the constitutional level, it's my judgment that the bill as presented to the Judiciary Committee was unconstitutional for several reasons. The bill, which allows cases involving personal injury, property damage, contracts, and negotiable instrument cases having an amount in controversy of \$100,000 or less, to be automatically and mandatorily referred to arbitration is an unconstitutional impediment to a litigant's right to a trial by jury. While the right to demand a de novo trial by jury has been held to be the cure of such an impediment within a court system, I must point out that mandatory arbitration is not a part of a court system. One is required to leave a court and the only way you get back in court is to demand a de novo trial. Moreover, the bill provides that if the court subsequently determines that a person demanded a trial de novo without good cause, the court can tax the entire cost of the arbitration proceeding against the appealing party. Thus, in



INTERVIEW from p. 5

addition to having the impediment of mandatory arbitration, an appealing litigant must gamble with a price impediment of having substantial costs taxed against him even though he might win the case before a jury on a de novo trial. For example, if the arbitration award were \$35,000 and the jury verdict were \$35,000, conceivably the court could find that good cause did not exist for the de novo demand. I also have difficulties with the bill from an equal protection standpoint as well as from the access to justice concept under due process.

My second level of objection is from a policy standpoint. I consider a compulsory arbitration forum to be less than first-class. It has been called "second-class justice." I can't rank it that high. In fact, I can't place it in any class of justice. Fundamentally a system of justice, be it classified as first-class, second-class or third-class, must have at least the following elements: (1) a court, (2) a judge, (3) a requirement that the judge take an oath of office, and (4) a requirement that the trier of facts take an oath. The compulsory Court Annexed Arbitration Bill contains none of these essential elements of a justice system.

There looms on the horizon a real possibility that the door to federal courts will be substantially closed to the average American citizen and that federal district court judges will only participate in trials involving special interests where the damages exceed \$100,000 or cases of special federal questions such as antitrust violations. There can be little doubt that many doors will be closed if compulsory arbitration is adopted along with the expansion of the powers of a magistrate to try civil cases and


with the abolition of diversity jurisdiction.

On a third level, there are a number of technical problems with the Act which I won't take time to enumerate, but I will mention a few. For example, the Act provides no real rules of procedure or practice for the conduct of the arbitration hearing. The use of the Federal Rules of Civil Procedure is unclear. Most contracts which contain a provision calling for arbitration at least incorporate a practice system, such as the rules of the American Arbitration Association, but this major piece of federal legislation contains no rules of practice or procedure. Apparently, each district court would be free to more or less fashion its own rules of procedure as it sees fit. The original bill didn't require the use of rules of evidence. It has now been amended so that the Federal Rules of Evidence are at least a guide. The bill is destructive of the concept of the rule of law.

In addition, there is no mechanism for the selection of an arbitrator or of a board of arbitrators. In fact, there's nothing that says how many arbitrators would be selected, whether one or a panel of three or whatever. One might walk into an arbitration proceeding and find his case being handled by a man he trounced in court only the day before, or by a person who is regularly engaged in litigation against the attorney in some specialized field. Certainly the way the bill is drafted the potential for conflicts are almost unlimited. There are other points, but as I said, I will not go into them in detail. I just wanted to mention some examples of technical problems I see with the Act.

In my judgement, the proponents of the arbitration legislation are using the same key words in the name of reform of the federal courts that led to

such disastrous effects in the state court systems. These words are "experimentation," "flexibility," "adaptability to local needs," "expediency," and the like. It was experimentation, flexibility, adaptability to local needs, and expediency which caused many state court systems to be an unmanageable morass of local rules, local procedures, and practices. Again let me point out that uniformity is the polestar of court reform, yet the so-called reforms that are being offered, especially in the Arbitration Bill, tend to move the federal courts towards a system of let every district court do its own thing and let each arbitrator run his own show any way he desires.


While I am strongly opposed to compulsory arbitration, I do not share similar views about consent arbitration. 

#### NOTICE

The telephone number of the American-British Law Division of the Law Library of the Library of Congress has been changed. Federal judges (or their staff) who are interested in using the research and reference service of the American-British Law Library should call the Chief of that Division, Marlene McGuirl at (202) 287-5081.

The services available from this Division of the Library of Congress appeared in *The Third Branch*, February 1979, p. 7.

SPEEDY TRIAL from p. 2

about its application to the time limit from indictment or initial appearance to arraignment. 



## REPORTS ON CIRCUIT EXECUTIVES AND JUDICIAL COUNCIL OPERATIONS PUBLISHED

Following a two-year nationwide survey, the Judicial Center has recently published studies of the work of the judicial councils and the circuit executives. The survey involved extended visits to each circuit, conferences with many judges and supporting personnel, and examination of correspondence, reports, minutes, and other documents relevant to the project mission.

The judicial councils are, by statute, the regional governing bodies of the eleven circuits. There is a council in each circuit composed of the active court of appeals judges of the circuit. Legislation providing for district court representation on the councils is pending. Most of the previous writing on judicial councils has criticized them for inactivity; one writer called them the "rusty hinges of federal judicial administration." The Judicial Center report, *Operation of the Federal Judicial Councils*, finds a more encouraging picture. It analyzes the councils' exercise of their various statutory responsibilities with special attention to the major duties of supervising docket management and handling complaints about any judge's behavior.

The councils have often acted in a subtle and effective fashion, the report concludes, in the delicate matters that have been brought to them involving misbehavior or nonfeasance by a federal judge. The researchers made a vigorous effort to find problems that had been "swept under the rug," as critics of the councils apparently believe is common. They found none, and conclude that the councils have done an effective job of acting upon serious complaints concerning the work of the

## Appointments Announced

### FOREIGN INTELLIGENCE SURVEILLANCE COURTS

Chief Justice Warren Burger announced May 18 the appointment of seven United States District Court Judges as members of The Foreign Intelligence Surveillance Court. Three United States Circuit Judges empowered to review denials of surveillance applications were designated as members of The Foreign Intelligence Surveillance Court of Review. The two courts were created by the Foreign Intelligence Surveillance Act of 1978 (P.L. 95-511).

United States District Judges appointed to the Foreign Intelligence Surveillance Court and their terms are:

Albert V. Bryan, Jr., Eastern District of Virginia, seven years.

Frederick B. Lacey, District of New Jersey, six years.

Lawrence Warren Pierce, Southern District of New York, five years.

Frank J. McGarr, Northern District of Illinois, four years.

George L. Hart, Jr., District of Columbia, three years.


James H. Meredith, Eastern District of Missouri, two years.

Thomas Jamison MacBride, Eastern District of California one year.

United States Circuit Judges appointed to the Foreign Intelligence Surveillance Court of Review and their terms are:

A. Leon Higginbotham, Jr., Third Circuit, seven years.

James E. Barrett, Tenth Circuit, five years.

George Edward MacKinnon, District of Columbia Circuit, three years. 

judiciary. However, the report suggests two kinds of steps to improve awareness of council powers: discussion of council activity at circuit judicial conferences, and creation of regular bodies that can receive and screen complaints.

The report suggests that judicial council docket supervision could be improved through more rigorous and timely use of available information. Several specific steps are suggested to use existing statistical reports more effectively. In particular, the circuit executives should do more thorough staff work on available information provided by the Administrative Office, pinpointing problem areas and suggesting council actions that could lead to solutions.

The second report, *The Impact of the Circuit Executive Act*, examines the work and accomplishments of the circuit

executives in light of the purposes and hopes embodied in the 1971 Act that established their positions. The picture is extremely diverse. Reflecting the different tasks, assignments, and resources available to them, the circuit executives developed their positions in ways distinctive to the needs and circumstances of their particular circuits.

Some have made major contributions to administrative policy in their circuit, and have strengthened the operations not only of the courts of appeals but also the other courts throughout their circuits. Others have made more limited contributions, stressing, for example, assisting the chief judge of the circuit. Also, because the position was not precisely defined, sometimes there have been significant conflicts with other officials with overlapping re-

See CIRCUIT EXECUTIVES p. 9



### NEW PER DIEM DESIGNATIONS

Effective April 22, 70 new cities have been designated high rate areas for claims of actual expenses while traveling on official business. In addition, 21 previously designated high rate areas have increased maximum allowances, and some have redefined boundaries.

This listing of new high rate areas and increased maximum allowances was distributed to all officers and employees of the judiciary by the Director of the Administrative Office of the United States Courts on April 19.

### NOTEWORTHY

Twenty-two bankruptcy clerks in the Bankruptcy Court at Denver, Colorado have voluntarily used their free time to learn sign language for the deaf. This special training — a cooperative venture between the Federal Judicial Center's Education and Training Division and the U.S. District Court — made it possible for this Court to hire its first deaf deputy clerk.

Deputy Clerks attended a series of 16 classes in sign language given at the Court by the Center on Deafness. Attendance was funded by the Federal Judicial Center.

\* \* \* \* \*

George W. Shirley, chief of the Analysis and Reports Branch, Statistical Analysis and Reports Division, at the A.O. died in March. To quote A.O. Director Foley: "His keen mind and concise way of analyzing problems proved of great value to all of us. His contribution to the Speedy Trial Reports sent to Congress represent a high mark for this agency."

See NOTEWORTHY p. 9

PERSONNEL from p. 10

### CONFIRMATIONS

Robert M. Parker, U.S. District Judge, E.D. TX, Apr. 24

Barefoot Sanders, U.S. District Judge, N.D. TX, Apr. 24

David O. Belew, Jr., U.S. District Judge, N.D. TX Apr. 24

Martin F. Loughlin, U.S. District Judge, D. NH, Apr. 24

Mary Lou Robinson, U.S. District Judge, N.D. TX, Apr. 24

Paul G. Hatfield, U.S. District Judge, D. MT, May 9

George E. Cire, U.S. District Judge, S.D. TX, May 10

James DeAnda, U.S. District Judge, S.D. TX, May 10

Norman W. Black, U.S. District Judge, S.D. TX, May 10

Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, May 10

Joyce Hens Green, U.S. District Judge, D.C., May 10

George P. Kazen, U.S. District Judge, S.D. TX, May 10

William Ray Overton, U.S. District Judge, E.D. AR, May 10

Harold Duane Vietor, U.S. District Judge, S.D. IA, May 10

Donald James Porter, U.S. District Judge, D. SD, May 10

### APPOINTMENTS

Robert E. Keeton, U.S. District Judge, D. MA, Apr. 2

John J. McNaught, U.S. District Judge, D. MA, Apr. 2

David S. Nelson, U.S. District Judge, D. MA, Apr. 2

Rya W. Zobel, U.S. District Judge, D. MA, Apr. 2

Phyllis A. Kravitch, U.S. Circuit Judge (CA-5), Apr. 10

Abraham D. Sofaer, U.S. District Judge, S.D. NY, Apr. 23

Mary Lou Robinson, U.S. District Judge, N.D. TX, May 1

David O. Belew, Jr., U.S. District Judge, N.D. TX, May 4

Martin F. Loughlin, U.S. District Judge, D. NH, May 4

Barefoot Sanders, U.S. District Judge, N.D. TX, May 4

Robert M. Parker, U.S. District Judge, E.D. TX, Apr. 26

George E. Cire, U.S. District Judge, S.D. TX, May 11

Norman W. Black, U.S. District Judge, S.D. TX, May 11

Gabriele Anne Kirk McDonald, U.S. District Judge, S.D. TX, May 11

Joyce Hens Green, U.S. District Judge, D.C., May 11

George P. Kazen, U.S. District Judge, S.D. TX, May 11

William Ray Overton, U.S. District Judge, E.D. AR, May 11

James DeAnda, U.S. District Judge, S.D. TX, May 11

Harold Duane Vietor, U.S. District Judge, S.D. IA, May 11

Paul G. Hatfield, U.S. District, D. MT, May 11

Donald James Porter, U.S. District Judge, D. SD, May 11

### DEATH

Frederick Kaess, U.S. District Judge, E.D. MI, Mar. 30

JUDICIAL FELLOWS from p. 3

Mr. Ubell is currently Chief Commissioner of the Michigan Supreme Court, a position he has held since 1977. After graduating from the University of Michigan Law School in 1969, he began his career in the Michigan court system as a research attorney for the Court of Appeals. He later became Assistant Clerk of the Court of Appeals and Director of the Prosecuting Attorneys Appellate Service. The Supreme Court of Michigan has granted him a leave of absence to serve as a Judicial Fellow.

Mr. Ubell is also Chairman of the Young Lawyers Section of the State Bar of Michigan and member of the State Bar Board of Commissioners.



CIRCUIT EXECUTIVES from p. 7

responsibilities, especially the clerks of the courts of appeals.

Based on numerous interviews with circuit judges and others, the report suggests that circuit executives should move increasingly into broader and more substantial matters of administrative policy. Also, they should reduce the time they devote to routine matters, delegating them to others when possible.

Although the two reports draw upon the same field work, their origins are different. The circuit executive report has been prepared to help in meeting assurance given in 1971 that the judiciary would report to Congress on the operation of the Circuit Executive Act, after sufficient

time had passed to appraise the results.

After work was begun, the Judicial Center was requested by the Judicial Conference Subcommittee on Jurisdiction to include also an evaluation of the operation of the judicial councils, in light of the guidelines on their operation promulgated by the Judicial Conference of the United States in March 1974. The Subcommittee, which had drafted the guidelines, wished to determine the need for modification or amendment of the guidelines. The report has been submitted also to the Subcommittee on Judicial Improvements, which now has responsibility for judicial council matters.


The reports are available from the Center's Information Services Office.

N-COURT from p. 3

judges in determining what areas they will want to cover to supplement their prior experience. Some of the topics listed will be covered in the Federal Judicial Center's seminars for newly appointed judges, but the one-week seminars cannot address all the needs of every judge. Moreover, the Committee's view is that it is very essential that the new judges have the benefit of early and locally based orientation before assuming their judicial functions.

Although the checklist is intended to cover the full range of subjects a judge will early encounter, some obvious things are not included, such as local rules, the case assignment system and procedures for reassignment. The Committee urges all new judges, working with their chief judges, to become familiar with all of these topics before induction.

The judges who designed the program are suggesting that all

newly appointed judges spend at least one week, before assuming their full share of their judicial responsibilities, in close association with experienced judges. A further suggestion is that a few days of this period should be spent sitting with or observing a fellow judge on the bench. 



Law clerks from The Supreme Court of Canada annually make a visit to the Federal Judicial Center as a part of their Washington Program. This year the group viewed a video tape on the Appellate Information Management System (AIMS) and heard presentations on the work of the Center made by senior staff including Gordon Bermant (pictured above), a Senior Research Psychologist who exchanged views with the clerks on the role of research in the justice system.


#### A Correction:

#### THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

Last month *The Third Branch*, in an article announcing two appointments to the Multidistrict Litigation Panel, incorrectly stated that Judge Murray I. Gurfein (CA-2), the new Chairman of the Panel, succeeds Judge William H. Becker (W.D. Mo.).

Judge Gurfein succeeds Judge John Minor Wisdom (CA-5).

NOTEWORTHY from p. 8

Recently released in the Ninth Circuit: A booklet entitled *Information for Lawyer Representatives of the Judicial Conference of the Ninth Circuit*. The publication contains such information as the standards established for selection of the lawyer representatives, the role of the representatives at the Conference, when and how they meet during the Conference, and how the representatives' coordinating committee should function. 



# DOJ calendar

May 30-June 1 Judicial Conference Advisory Committee on Civil Rules; Washington, DC

May 31 COURTRAN II STARS and INDEX Overview; Washington, DC

Jun 4-6 Seminar for Jury Clerks; Reno, NV

Jun 4-7 COURTRAN II Coordinators Advanced Course; Washington, DC

Jun 4-8 Advanced Seminar for U.S. Magistrates; Atlanta, GA

Jun 5-8 Effective Productivity for Court Personnel; Columbia, SC

Jun 11-15 Advanced Seminar for U.S. Probation Officers; Kansas City, MO

Jun 14-15 Workshop for District Judges (Third Circuit); Cherry Hill, NJ

Jun 18-21 COURTRAN II STARS and INDEX Review; Washington, DC

Jun 18-22 Drug Abuse Aftercare Seminar; St. Louis, MO

Jun 18-23 Seminar for Newly Appointed District Judges; Washington, DC

Jun 19 Judicial Conference Subcommittee on Supportive Personnel; Washington, DC

Jun 19-22 Effective Productivity for Court Personnel; Detroit, MI

Jun 25-26 Judicial Conference Standing Committee on Rules of Practice and Procedure; Washington, DC

Jun 25-26 Judicial Conference Subcommittee on Judicial Improvements; San Francisco, CA

Jun 25-27 Seminar for Fiscal Clerks; Salt Lake City, UT

Jun 25-29 Advanced Seminar for U.S. Probation Officers; Birmingham, AL

Jun 28-30 Fourth Circuit Judicial Conference, Hot Springs, VA

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# PERSONNEL

## NOMINATIONS

Edward C. Reed, Jr., U.S. District Judge, D. NV, Apr. 2

Albert J. Henderson, U.S. Circuit Judge (CA-5), Apr. 2

Robert L. Anderson, III, U.S. Circuit Judge (CA-5), Apr. 2

Reynaldo G. Garza, U.S. Circuit Judge (CA-5), Apr. 30

Jon O. Newman, U.S. Circuit Judge (CA-2), Apr. 30

Carolyn D. Randall, U.S. Circuit Judge (CA-5), Apr. 30

Patricia M. Wald, U.S. Circuit Judge (CA-DC), Apr. 30

Marvin E. Aspen, U.S. District Judge, N.D. IL, Apr. 30

Valdemar A. Cordova, U.S. District Judge, D. AZ, Apr. 3

Amalya L. Kearse, U.S. Circuit Judge (CA-2), May 3

Mary Schroeder, U.S. Circuit Judge (CA-9), May 3

Henry A. Politz, U.S. Circuit Judge (CA-5), May 3

Francis D. Murnaghan, Jr., U.S. Circuit Judge (CA-4), May 8

James P. Jones, U.S. District Judge, W.D. VA, May 16

Avern Cohn, U.S. District Judge, E.D. MI, May 17

Stewart A. Newblatt, U.S. District Judge, E.D. MI, May 17

Anna Diggs-Taylor, U.S. District Judge, E.D. MI, May 17

See PERSONNEL page 17

## THE THIRD BRANCH

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## THE FEDERAL JUDICIAL CENTER

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## Bulletin of the Federal Courts

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JUNE, 1979

### SENATE APPROVES SPEEDY TRIAL AMENDMENTS

The Senate has approved amendments to the Speedy Trial Act that would postpone the effective date of the dismissal sanction to July 1, 1981.

The Senate bill, passed on June 19, was proposed by Senators Biden, Bayh and Kennedy as an alternative to bills submitted by the Judicial Conference of the United States and the Department of Justice. The House of Representatives is not expected to complete consideration of the bill before the sanctions take effect on July 1.

In addition to postponing the effective date of the sanctions, the Senate bill would:

- Merge the 10-day period to arraignment and the 60-day period to trial into a single 70-day time limit from indictment to trial.

- Provide that trial may not commence without the consent of the defendant, sooner than 30 days from the date of the defendant's first appearance through counsel.

- Expand the exclusion for "other proceedings concerning the defendant," partly by specifying that it covers the period from the filing date of a pretrial motion through the conclusion of hearings on it.

See SPEEDY TRIAL p. 2

### CONGRESSMAN ROBERT W. KASTENMEIER AND THE FEDERAL JUDICIARY

The following is another in a series of interviews with individuals whose official activities directly affect the work of the federal courts.

Congressman Kastenmeier has represented his native State of Wisconsin in Congress since 1958.

The Congressman is a member of the House Judiciary Committee and is Chairman of the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. He has played a prominent role in promoting human rights causes; he has been a strong advocate of "open government" (and was one of the first to open his Subcommittee meetings to the public); and he has a keen and continuing interest in the federal courts.

\* \* \* \* \*

**As Chairman of the House Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice, with oversight and legislative authority over the federal judiciary, you play a special role in the relationship of the legislative branch to the federal courts. From that perspective, do you have a special methodology to guide the work of your Subcommittee in approaching issues relating to court reform and access to justice?**



ROBERT W. KASTENMEIER

I guess it could be said that I have a special methodology. Basically my Subcommittee deals with global issues. In addition to courts, we have jurisdiction over prisons, legal services, privacy, and intellectual property. Several years back we took up the overall issue of corrections. In a somewhat similar way two years ago we seriously considered the role of and the strains on the federal judicial branch of government. While it would be unfair to imply that past Congresses and Judiciary Committees of the Senate and the House have not dealt with federal courts in a comprehensive way, for the first time in a long while a Subcommittee inquired into the broad issue of the state of the judiciary and

See KASTENMEIER p. 4



## WIRETAP REPORT RELEASED

The eleventh annual report on applications for orders authorizing or approving the interception of wire or oral communications has been submitted to Congress by the Director of the Administrative Office of the U. S. Courts. This report covers the period January 1 to December 31, 1978.

As required by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, the Administrative Office in April of

each year must report to Congress the numbers of applications, orders and extensions granted or denied. The report summarizes the data required to be filed with the Administrative Office by federal and state judges and prosecuting officials.

Section 2518 of Title 18 U.S.C. requires each state and federal judge to file a written report with the Director of the Administrative Office on each application made to him for an order authorizing the interception of a wire or oral communication.

These reports contain detailed information including the nature of the offense specified in the application, the duration of the authorized interception and the name of the applicant. Prosecuting officials who have applied for intercept orders are required to report annually on the results of the intercepts in terms of costs, and the numbers of trials, convictions and motions to suppress evidence obtained through the use of the intercepts. None of the information submitted by either judges or prosecuting officials reveals the names, addresses or telephone numbers of the persons under investigation.

Virtually all applications for wiretap orders were granted. During calendar year 1978, 572 applications were received and 570 were granted. Fourteen percent of these orders were issued by federal judges. For the second consecutive year there was a 9% decrease in the overall number of wiretap orders authorized and approved. While federal orders increased from 77 in 1977 to 81 in 1978, state authorizations decreased from 549 in 1977 to 489 in 1978.

The report summarizes the number of intercept orders authorized by each reporting jurisdiction, the number of intercept orders which were reported as amended, the number of extensions granted,

and the average length of the original authorization and extensions. It also reflects the total number of days during which intercepts were reported in actual use and the type of location where the interception of communications occurred.

The report showed that:

- Authorized length of time for the 570 applications granted varied from one day to 150 days. The average length of the original authorizations was 24 days compared to 25 days in 1977.

- A wide range of offenses were specified in the applications and many specified more than one crime. In 42% of the state and federal authorizations, gambling was the most common offense under investigation; drug offenses and racketeering were the next most common.

- Locations of interceptions included 249 single family dwellings, 112 apartments, and 125 business locations. In 23 authorizations the place of interception was another type of location such as a public pay telephone, an automobile, or a social club.

- The average number of interceptions for a single authorization varied in frequency from less than one per day to 221 per day. The average number of persons whose conversations were intercepted was 68 per installed interception. The average number of communications overheard was 738 per order, while the average number of communications intercepted which produced incriminating evidence was 205 per order. Of the installed interceptions reported, 510 were telephone wiretaps and 27 were microphone eavesdrops. Twenty-one reports specified that more than one type of surveillance was used.


- The average cost for the orders for which a cost figure was reported was \$11,275, an

### SPEEDY TRIAL from p. 1

- Make clear that an "ends of justice" continuance may be granted to give a defendant reasonable time to obtain counsel, or to preserve continuity of counsel, or to ensure adequate preparation time.

- Continue the activities of the district planning groups, and require submission of a third round of speedy trial plans by June 30, 1980.

- Change the "judicial emergency" provision to give the circuit councils final approval authority and to permit the chief judge of a district court to order brief suspension of the time limits while the circuit council is considering the application.

Both the Judicial Conference and the Justice Department have proposed legislation that would expand the statutory time limits. Although the Senate bill does not expand the time limits, liberalization of the exclusion for "other proceedings" and clarification of the "ends of justice" continuance are efforts to respond to concerns that the statutory time limits may be too restrictive. 



## CHIEF JUSTICE ADDRESSES FIFTH CIRCUIT ON CORRECTIONS

In an address to the Fifth Circuit Judicial Conference last month The Chief Justice recommended the creation of a National Corrections Academy and a concentrated program to teach every prisoner to read and write and to give him a marketable skill. The Chief Justice said:

"Some years ago I made a proposal that I would like to renew today. The federal government should create a National Corrections Academy patterned along the lines of the F.B.I. Academy. The F.B.I. has done an extraordinary service to this country for more than 40 years in providing training for local and state law enforcement officers, which has vastly improved law enforcement practices throughout the country. This was especially important in an era when judicial decisions were raising the constitutional standards that law enforcement officers were required to meet. The National Corrections Academy should devote itself to training security officers, prison counselors, and probation officers of the states. Some of the states have excellent programs. But what little we know about corrections should be pooled and shared in a central, national facility. Such an institution could develop uniform, minimum standards to guide those states that desire help.

"In many of the institutions in this country today, a majority of the inmates cannot read or write; they are functional illiterates. If they remain that way, the prospects of their returning to prison are greatly increased. During the period of incarceration a concentrated program must be available on two levels: First, to see to it that every prisoner learns to read



Senator Edward M. Kennedy, Chairman of the Senate Judiciary Committee, was a featured speaker at the banquet concluding the Second Circuit Judicial Conference held at Buck Hill Falls, Pennsylvania just last month. Pictured above (top) are: Mrs. Irving R. Kaufman, Senator Kennedy, and Chief Judge Irving R. Kaufman. Two other speakers at the Second Circuit's banquet were: Attorney General Griffin B. Bell (pictured immediately above), and Henry A. Grunwald, Editor of Time, Inc. Mrs. Grunwald is to the Attorney General's right.


and write; and, second, to see that each prisoner is trained in a marketable skill. This should begin at once with experiments in a limited number of institutions in several states.

"We need do no more than look at our recidivist rate and speculate on what kind of business could survive under the private enterprise system if it turned out products with as high a 'recall' rate as we experience in American prisons.

"To put a man behind bars to protect society without trying to change him is to win a battle and

lose a war."

Urging that the Attorney General begin these programs, he said:

"We have at the moment in this country as the Attorney General of the United States a man who has shared with all of us the experience of the judicial branch. He has brought new insights, and new vision into the office of Attorney General, and he has concerned himself with the problems I have been discussing. Before he leaves that office, I hope he will take the first steps to develop a program of this kind." 



# CONGRESSMAN ROBERT W. KASTENMEIER AND THE FEDERAL JUDICIARY from p. 1

access to justice. During these oversight hearings we attempted to examine the broad range of issues by receiving testimony from leading jurists and scholars in the legal field. This gave us a philosophical underpinning as to the basic questions relating to such things as access to the courts and the costs and delays of litigation. It also gave us a look at the status of the judiciary afresh—that is to say from a perspective of 1977. Of course in the past many, many of the questions had been well noted, and solutions offered to remedy problems related to the appellate structure, the number of judgeships, and other things that have long been with us. We received testimony from individuals who played important roles in the Hruska Commission, the Pound Conference, and the Justice Department Report on the Needs of the Federal Courts. Nonetheless, to try to approach the pertinent questions we needed some sort of overview in terms of the general questions affecting the courts, in which particular statutory and sometimes other solutions would be proposed to play a major role in alleviating these problems and to explain why we approached them in that fashion. I would think in a sense that through the "state of the judiciary" and "access to justice" hearings we tried to expose the Committee to all major or relevant questions affecting the judiciary. Frankly, access to justice is a somewhat more difficult question. We added this to our inquiry because court related problems are really people problems, not merely judge or lawyer problems. Some aspects of the access to justice issue—such as questions relating to standing and class actions—are very

controversial. This leads to a critical interpretation of certain supreme Court decisions. So, while we recognize these questions, certain of them are not so easily resolved; indeed, questions relating ultimately to the Supreme Court are perhaps the most difficult to solve.

Nonetheless, with that as a starting point we were able during our general hearings to delve into specific statutory proposals for change in the existing system. To a very large degree, these proposals have not yet been enacted, but today—in 1979—they have reached a point of high visibility, in terms of general recognition of both the issues and the solutions proposed. The range of issues simply goes from, at the very bottom, access to justice for resolution of minor disputes, right through the entire court structure to changing the mandatory jurisdiction of the Supreme Court. Some of the matters are being treated by my Subcommittee and some are treated by other congressional components. Examples of these issues are diversity of citizenship jurisdiction, magistrates reform, arbitration, habeas corpus, and appellate court improvements, which are all in my Subcommittee; bankruptcy reform, which is not; and creation of new federal judgeships, both district and circuit, which is not in my Subcommittee although we are interested in it. Many others, what I would call conservational, possibly housekeeping changes are proposed modifications in district and division dividing lines, in places of holding court and in judicial machinery affecting judges, juries, witnesses, marshals, and probation officers; indeed all the areas that go into administering the federal judicial system are of great interest to me. Many times

relatively unimportant legislative measures, taken collectively, can keep the existing system in tune. These have in part been treated or are in the process of being treated.

During the next several years, we will be in the process, as I see it, of assessing also the impact of the great number of new judges and to what extent this has a ripple effect upward in the system as far as the Supreme Court is concerned. These, as well as other more subtle questions, such as judicial tenure and many others, are in the process of being dealt with by my Subcommittee and by our Senate counterparts. I have very high hopes for at least the expeditious resolution of most of these questions as well as others that will surface in the general context of what I would call the "state of the judiciary" and "access to justice."

**You mentioned prisons and corrections and in the Chief Justice's recent comments to the Fifth Circuit he suggested that there should be an academy for training of the people in the corrections system, very similar to the FBI Academy. Would you care to comment on that?**

I would think that is a useful idea. We do have a sort of submerged National Institute of Corrections. I say "submerged" in the sense that its independence and its comprehensive ability to deal with the system and to be innovative is somewhat restricted. I noticed The Chief Justice's statement and some other comments he recently made with respect to teaching inmates reading and writing skills. The Chief Justice has always had an abiding interest in corrections and usually his suggestions have very great merit. We need to work together to the extent we



can. The use of the Executive Branch instrumentalities such as the Law Enforcement Assistance Administration is somewhat overworked. We have need in the next several years, I think, to reorder how the national government, probably under the aegis of the Attorney General, is able to respond to a number of problems in the area of the judicial and the criminal justice systems.

That we have major problems in the area of the judicial and the criminal justice systems is unquestioned. In addition to law enforcement problems, we have problems of how to aid the state courts. We have problems of how to aid corrections, notwithstanding the fact that they be state and local prisons and jails. We think there is a federal role, although we think it ought to be in conjunction with state and local entities who are in the field whether we are talking about courts or corrections. To this extent I would think that some sort of National Institute of Justice which either replaces or in time supercedes the Law Enforcement Assistance Administration with changes of emphasis would be very useful in giving voice to some of the suggestions made by Chief Justice Burger and many other similar concerns that we must confront in an effort to aid courts or corrections personnel in other areas.

**You were a member of the Judiciary Committee when the act creating the Federal Judicial Center was enacted in 1967. Do you feel the Center has met its mandate from Congress? Also, do you have some suggestions for special projects that should be undertaken by Center staff?**

I think the Federal Judicial Center, to the extent that I am familiar with its activities, has certainly lived up to its mandate. Although I was not a member of

the Subcommittee that actually created it, I think it was an essential outgrowth and an early recognition of the fact that we needed an entity devoted to judicial administration in the country. In this regard, it has provided very great assistance. Its in-depth research on court-related problems is of very high quality. It even sometimes functions by having its prominent people participate in the work of other commissions and matters not directly related to the judiciary. So I think it really has done a great deal. I suspect if there is a problem it is whether or not it has high enough visibility and whether the Center is asked to participate and contribute as much and as often as it should; at least I am speaking for Congress. I think it is somewhat neglected by Congress and it could be a very useful arm which the Congress could use, especially when considering improvements in the administration of justice. We—the Senate and House Judiciary Committees—probably do not rely as much on the Center as we should.

I must say I have nothing but encouraging and good reports in terms of it serving the mandate it was created to serve. It possibly could even be expanded, but I am afraid that I really have not given it enough thought to precisely give an informed view about that.

**A look at the history of the federal court system shows that the answer to court congestion has been to increase the number of judgeships. Do you have some personal ideas about alternative solutions to meeting increasingly heavy caseloads? In other words, the total answer to meeting heavy caseloads is not additional judgeships.**

I agree. As a matter of fact, a lasting impression left on me

and perhaps other members of my Subcommittee from our hearings was that we cannot continue to increase the number of judges in the federal judiciary and maintain high quality. Really, I think high quality has been maintained in the past and we still hope to maintain this high standard with the recent very large increase of 152 judges to the system. However, we cannot in the future hope to inexorably add large numbers of judges and hope to keep the system in good order. Similarly, the creation of large numbers of judgeships breeds new problems, especially at the appellate levels of the system. More cases ultimately enter and flow through the judicial system, impacting more heavily upon the Supreme Court which remains the same. Moreover, the expansion of the number of judges is only a short term solution to the difficult problems needing attention.

Rather, we should seek other devices to be sure that this particular number of judges ought to be able to handle matters. There are a number of things that have taken place which I think will already aid in that regard. What we have done in the past and presently propose to do with respect to magistrates will clearly aid. Giving courts the flexibility of using magistrates in a broader range of cases in court situations, I think, will be beneficial in terms of disposing of matters before the federal district courts. It is felt that the upgrading of the bankruptcy judges in the most recent Bankruptcy Reform Act should be of some assistance as well. Every part of that bill may not be agreed on by one and all; I know there was some controversy about the status of the bankruptcy judge. Nonetheless, clearly it was designed to rely more on the autonomous



## KASTENMEIER from p. 5

bankruptcy judge and less on subsequent action by the federal district courts further up the judicial ladder.

One of the things we are particularly interested in is rationalizing the federal/state justice systems through change in the present diversity jurisdiction of federal courts. That is to say, essentially, state cases ought to remain in state systems for resolution and that federal question cases ought to have access to the federal courts, with more or less rare exceptions, at least compared to the very great number of essentially state questions and state actions that presently find their way into the federal courts based on the fortuitous circumstance of diversity of citizenship. This would be a very great relief to the federal system and in terms of our federalism would also be a far more rational way to proceed. There also are grounds to believe that in the long run, the state courts could benefit from this more principled role in the total justice system. While the abolition of diversity jurisdiction is resisted among many practitioners who prefer the old way of doing things, nonetheless, I think that it would be very beneficial. In a related area, improving mechanisms for the resolution of minor disputes would only marginally help the federal judicial system in terms of caseload; however, I think it would significantly help the state systems by providing for alternative forums for the resolution of questions that would otherwise be litigated in state systems. I do think there would be a ripple effect. While we would divert more diversity cases back into the state system, at the same time we would help both the federal and state systems by providing alternative forums for resolution of conflicts. I think

that providing substitute devices for resolving conflicts is an essential ingredient for reordering the jurisdictions of the two court systems in this country. Hopefully, caseloads would become more manageable and delays and costs of litigation would be lessened, and a higher quality justice would result.

We are, of course, obviously looking at other things in the process, such as arbitration. There are many other devices as well which we have in legislative form in terms of proposals, which also hopefully will reduce caseloads and ultimately reduce litigation and trials.

There are other things taking place. I suppose when you discuss this, one has to talk about the Congress in terms of the volume of legislation which tends to give new rights or give new opportunities for persons to vindicate rights and, therefore, candidly does become burdensome in terms of the federal judiciary. Yet, of course, no one says that those cases should not be there; indeed they should be. But, I think the Congress should understand what the judicial impact is of new legislation. We at least ought to be aware of it at the time that we are passing new legislation that may result additional burdens for the courts. Perhaps we can more carefully impose those burdens. We have the Speedy Trial Act which places a certain burden on the federal judicial system and a similar load on the United States Attorneys as far as prosecutions go. Similarly, federal rulemaking, whether this is done by the Justice Department or others, can have an important impact on state and federal courts. Criminal prosecutions in which there is companion jurisdiction can be diverted to the state systems. We would thereby permit the state systems to prosecute indivi-

duals for bank robbery, for auto theft, and so forth, thus shifting the burden from the federal system somewhat in terms of federal criminal prosecution. There are other ways of impacting on caseloads in the federal system and we should be aware of them. When and if the revision of the federal criminal code is enacted, it, too, will have a very powerful impact on the federal judicial system and probably some spillover that will impact on the states as well. It would be hard to predict the effect. I know there has been apprehension expressed by the most highly placed members of the federal judiciary as to what this impact might be. I would hope it would not be a burdensome one. The law itself should be a simplification and again a much more rational and consistent law, a much more comprehensible integrated law in Title 18 than is presently constituted. It should eventually be of help; at least that's what the hope would be. So all of these things will impact, it seems to me, on the burdens and caseloads of the federal judiciary and indeed on the entire national judicial system as far as that is concerned.

This is a rather long response to a short question. Clearly expansion of judgeships is not a miracle cure to the complex pressures and burdens placed on the federal judiciary in a rapidly changing society.

**You have a reputation as someone interested in ethics and accountability in government. What are your thoughts about legislation relating to judicial tenure or discipline?**

Well, I have not in the past delved deeply into that question but I do recognize that it is one that must be confronted by the House Judiciary Committee. The Senate has looked at the subject and it is a current issue. Indeed, I am not sure that it ever has been any more current, any



more compelling an issue than it presently is. We clearly need to reach some method, presumably through a judicial tenure statute, to resolve existing problems. It remains to be seen whether there are satisfactory alternatives to statutory reform. I know the Senate devoted a great deal of time to judicial tenure legislation and I commend the Senate Judiciary Committee for the time it has expended in this endeavor. The House has not, I concede. On the other hand, the House did go through a very elaborate impeachment inquiry and proceeding not many years ago with respect to a former President. The dreadful burden that that inquiry imposed upon the committee suggests that impeachment in present times can not readily be relied upon. Probably neither the Senate nor the House would wish to devote the time and resources to a normal impeachment of a judge, or any other federal officer, except where no other alternative exists. I do not believe that the Senate would be willing to constitute itself into a trial court for impeachment and conviction of a federal judge. The Senators would not have the time and would not have the disposition to do that. Therefore, while that even now would only rarely be considered, it becomes even less likely as the years pass. Therefore, it is appropriate, it seems to me, to find an alternative mechanism which has public credibility.

In the near future we will explore in House Judiciary Committee hearings what our present obligations are in such matters. At the same time we will examine statutory alternatives or legislative proposals with respect to judicial tenure and discipline. In my opinion, there is a likelihood that we will produce some sort of bill even though up to the present time there are rare cases indeed in which the good behavior of

judges is called into question. Nonetheless, I sense that there is an increasing interest in what constitutes appropriate behavior for public officials in the Congress, the Executive Branch, and the Judiciary as well. In other words, the judicial branch is not exempt from the same sort of general criticism being raised nationally about the official conduct and activities for other public servants. For that reason I suspect that the issue may have surfaced equilaterally of our own inquiries and so it may appear to make resolution of this very difficult question more necessary.

I am quite aware that many judges feel that the Constitution is meant to afford them protection against some attacks, whether they be official or otherwise. This makes the solution more difficult to arrive at. In this regard, I do not presently have a personal preference or to put it another way, I am not committed to a particular approach. I would like again to go into this question with an open mind to see what would be best achieved.

**After proposals were made by the Attorney General, three pilot programs were started in three federal districts relating to mandatory arbitration, with the right to a trial de novo if the litigants asked for it, and I understand that Congressman Rodino has introduced legislation on arbitration. Do you favor what the Attorney General is proposing?**

Yes, I am aware of the Attorney General's proposals. I also am aware that there has not been unanimity about arbitration. I have not crossed that bridge in terms of the constitutional objections raised by Senator Heflin, [see May 1979 issue of *The Third Branch*] but I think that we will want to explore this in more depth as relates to the actual

implementation of the arbitration technique. My own disposition is to regard arbitration affirmatively. The Attorney General must have carefully considered the constitutional objections and he must have found them to lack substance.

I would think that some time during this Congress we would want to look at the question of arbitration. At present it is not high on the agenda and perhaps we will have the benefit of further studies on the matter including your own. I do clearly believe that we must examine each of the Attorney General's initiatives. The problems of court congestion and costs we referred to earlier are sufficiently grave so that we cannot afford to disregard alternatives. It may be that Senator Heflin's reservations or objections are compelling enough to cause some delay in finally enacting such a proposal. That I do not know; but notwithstanding reservations, we will want to fully look at these. My view is that if alternatives to litigation can be appropriately employed it will make our system a little more flexible, and give us a few more options. Therefore, I generally start from the premise that I would like to see arbitration used in the federal courts rather than taking an opposing viewpoint.


**Often there are legislative proposals for minor changes in the existing judicial structure, which sometimes fall between the legislative cracks. Although these appear to be minor, from a housekeeping viewpoint they can be very important to the overall judicial structure. Do you have any observations on this?**

Yes, I agree with the proposition. I don't think that the House and Senate Subcommittees with responsibility over the



**KASTENMEIER from p. 7**

federal judicial system have overlooked the minor aspects. As a matter of fact we now consider many recommendations, some of which are in fact quite minor but which are nonetheless valid and ultimately ought to be enacted. We have, as a matter of fact, spent as much time with minor matters as is entitled to be spent on these questions. This certainly was true last Congress, with passage of juror, witness and judicial organization bills. And also this Congress, we have a series of other proposals, essentially minor in character, which we will probably treat relatively early. I quite agree that minor matters ought not to be disregarded and if either the House or Senate Judiciary Committees tends to them, it is likely the other Committee will respond. I don't have much apprehension about that. We have worked well with the Senate in this connection and we have worked well with other organizations with a direct interest in the courts—the Administrative Office of the United States Courts, and all the other organizations that can give us assistance. I think that will be one of the areas where we will probably get the least criticism.

One of the important things, as I see it, is to perfect the federal judicial system in terms of general efficiency and access to justice. The system must be kept in tune. This is an ongoing and continuing proposition. In addition, this can have a very great beneficial effect on state systems either by example or by just some sort of residual effect and to the extent that we can achieve this, it reflects well on the confidence the American citizen has in his government and his judicial system. I regard this whole area as a very important obligation of my Subcommittee. 

**THIRD CIRCUIT POSITIONS AVAILABLE**

**Clerk, United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania.**

**Salary:** \$38,160—\$44,756 (JSP 15 or 16) commensurate with qualifications.

**Responsibilities:** Under the direction of the Court and pertinent statutes and rules for planning, the Clerk manages and supervises the business of the Court, including personnel, case management, relationship with district courts and the practicing bar, statistics, interpretation of rules and disposition of delegated motion business.

**Qualifications:** Law degree with ten years active practice or experience in law-related fields; proven management and administrative skills. Education may be substituted for some experience. Send five copies of detailed application and resume to Chief Judge Collins J. Seitz, Lock Box 32, Federal Building, 844 King Street, Wilmington, Delaware 19801 prior to September 1, 1979.

**Assistant to the Third Circuit Executive and Judicial Council, United States Court of Appeals for the Third Circuit, Philadelphia, Pennsylvania.**

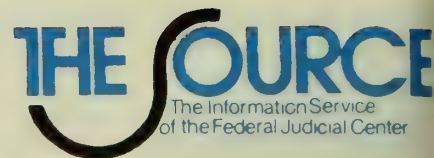
**Salary:** \$19,263-\$27,453 (JSP 11-13) commensurate with qualifications.

**Responsibility:** Under the Circuit Executive and Judicial

**WIRETAP from p. 2**

increase of 16% over the average cost reported in 1977. This included costs for orders where intercepts were installed but not used. The highest cost for a single federal wiretap authorization was \$141,695. The highest cost for a single state wiretap was \$332,770.

• There were 1,825 arrests and 337 convictions as of December 31 which resulted from interceptions during



The American Jury System Final Report. Chief Justice Earl Warren Conference on Advocacy in the United States American Trial Lawyers Foundation, 1977.


Federal Judicial Selection The Problems and Achievements of Carter's Merit Plan [Symposium]. 62 Judicature 465-510 (May 1979).

The Fifth Annual Judicial Conference of the United States Court of Customs and Patent Appeals, May 18, 1978. 81 FRD 125-262 (Apr. 1979).

Council, work in a broad range of tasks in all phases of court administration [See 28 USC 332 (e)].

**Qualifications:** Law degree and minimum of two years progressively responsible experience required; undergraduate degree in management or related field, and experience and/or specialized training in court administration desirable. Send five copies of detailed application and resume to Wm. A. (Pat) Doyle, Third Circuit Executive, 20716 U.S. Courthouse, Philadelphia, Pennsylvania, 19106 prior to September 1, 1979.

calendar year 1978. Many of the criminal cases for which electronic surveillance was authorized in 1978 are still under active investigation, however, and supplemental reports on the results of 1978 wiretaps will be filed later.

The report was prepared by the Statistical Analysis and Reports Division of the Administrative Office of the United States Courts. Copies of the report are available on request to this office. 



**PERSONNEL from p. 10**

Marvin H. Shoob, U.S. District Judge, N.D. GA, June 5  
 Ernest Tidwell, U.S. District Judge, N.D. GA, June 5  
 Veronica D. Wicker, U.S. District Judge, E.D. LA, June 5  
 John M. Shaw, U.S. District Judge, W.D. LA, June 5  
 Alton B. Hawkins, U.S. District Judge, D. SC, June 5  
 Weston Houck, U.S. District Judge, D. SC, June 5  
 Tom R. Carrigan, U.S. District Judge, D. CO, June 5  
 Rita L. Weinshienk, U.S. District Judge, D. CO, June 5  
 Otto R. Skopil, Jr., U.S. Circuit Judge (CA-9), June 14  
 Lynn C. Higby, U.S. District Judge, N.D. FL, June 14  
 Robert L. Vining, Jr., U.S. District Judge, N.D. GA, June 14  
 Patrick E. Carr, U.S. District Judge, E.D. LA, June 14  
 Robert J. Staker, U.S. District Judge, S.D. W.VA, June 14

**CONFIRMATIONS**

Frank M. Johnson, Jr., U.S. Circuit Judge (CA-5), June 19  
 Dolores K. Sloviter, U.S. Circuit Judge (CA-3), June 19  
 John O. Newman, U.S. Circuit Judge (CA-2), June 19  
 Aldemar A. Cordova, U.S. District Judge, D. AZ, June 19  
 Malaya L. Kearse, U.S. Circuit Judge (CA-2), June 19

**APPOINTMENT**

John G. Penn, U.S. District Judge, DC, May 15

**ELEVATIONS**

Shane Devine, Chief Judge, D. NH, May 4

**The Third Branch**

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

**Co-editors:**

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.

C.A. Muecke, Chief Judge, D.AZ, May 26  
 John A. MacKenzie, Chief Judge, E.D. VA, May 30  
 Irving Hill, Chief Judge, C.D. CA, June 1  
 Franklin T. Dupree, Jr., Chief Judge, E.D. NC, June 8

**DEATH**

John H. Wood, Jr., U.S. District Judge, W.D. TX, May 29

### CENTER ANNOUNCES PUBLICATION OF REPORT ON LOCAL DISCOVERY RULES AND PRACTICES

A report from the FJC Research Division on continuing efforts in the civil rules area is now available on request.

Titled *Federal Discovery: A Survey of Local Rules and Practices in View of Proposed Changes to the Federal Rules*, the report examines the attempts by federal district courts and individual judges to limit the consumption of judicial resources, to expedite the discovery process, to curb abuses in the use of discovery methods and to provide for more effective sanctions. Further, a comparison is made between these local practices and the reforms that have been proposed by the Advisory Committee on Civil Rules, the ABA Special Committee for the Study of Discovery Abuse, and the Second Circuit Commission on the Reduction of Burdens and Costs in Civil Litigation.

The report was prepared for the Center by Professor Sherman L. Cohn of the Georgetown University Law Center. It is based on an examination of the local rules of the district courts and a survey of district court judges conducted by the Center in 1977.


Copies of the report, which also appears in a recent issue of


### USE OF MASTERS IN INSTITUTIONAL REFORM CASES RELEASED

A report from the FJC Research Division on implementation of court orders in institutional reform cases is now available on request.

Titled *The Use of Masters In Institutional Reform Litigation*, the report analyzes the sources of authority for the appointment of a master, considers the advantages and disadvantages of the appointment in the implementation of major court ordered reform of correctional and mental health institutions, and evaluates the background and skills a potential master should bring the task of monitoring the facilitating compliance with the court's remedial decree.

The report was prepared for the Center by Professor Vincent M. Nathan of the University of Toledo Law School. As the master in two major correctional reform cases in Ohio, Professor Nathan brought practical experience to the task of writing the report. On the basis of his analyses and experiences Professor Nathan concludes that the appointment of a master in these complex cases, while not "an implementational panacea," can nevertheless be a useful device in the effort to secure compliance with court orders.

Copies of the report, which also appears in the Winter, 1979, issue of the *University of Toledo Law Review* (Volume 10, page 419), may be obtained from the Information Services Office of the Federal Judicial Center. 

the *Minnesota Law Review* (Volume 63, page 253), may be obtained from the Information Services Office of the Federal Judicial Center. 



# DOJ calendar

June 26-29 Effective Productivity for Court Personnel; Seattle, WA

June 27-29 Judicial Conference Committee to Implement the Criminal Justice Act; San Francisco, CA

June 27-29 Management Program for Executives; Burlington, VT

June 27-30 Tenth Circuit Judicial Conference, Jackson Hole, WY

June 28-30 Fourth Circuit Judicial Conference; Hot Springs, VA

July 9-13 Advanced Seminar for U.S. Probation Officers; San Diego, CA

July 16-20 Seminar for Judges' Secretaries; Washington, DC

July 20-21 Judicial Conference Committee on Operation of the Jury System; Mackinac Island, MI

July 22-26 Ninth Circuit Judicial Conference; Sun Valley, ID

July 23-25 Seminar for Jury Clerks; Cleveland, OH

July 24-27 Effective Productivity for Court Personnel; Houston, TX

July 25-27 Seminar for Bankruptcy Judges; Denver, CO

July 27-28 Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts; Sun Valley, ID

July 27-28 Judicial Conference Committee on Criminal Law; Nantucket, MA

July 29 Judicial Conference Committee on Intercircuit Assignments; Nantucket, MA

July 30-31 Judicial Conference Committee on Court Administration; Nantucket, MA

July 31-Aug 1 Judicial Conference Committee on the Administration of the Federal Magistrates System; Bar Harbour, ME

July 31-Aug 1 Judicial Conference Committee on the Administration of the Probation System; Jackson Hole, WY

## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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District of Oregon

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Federal Judicial Center

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# PERSONNEL

## NOMINATIONS

Joseph W. Hatchett, U.S. Circuit Judge (CA-5), May 21

William Hungate, U.S. District Judge, E.D. MO, May 21

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Shirley B. Jones, U.S. District Judge, D. MD, May 22

James B. Moran, U.S. District Judge, N.D. IL, May 22

John V. Parker, U.S. District Judge, M.D. LA, May 24

Scott O. Wright, U.S. District Judge, W.D. MO, May 24

Abner J. Mikva, U.S. Circuit Judge (DC), June 4

Richard P. Conaboy, U.S. District Judge, M.D. PA, June 4

Sylvia H. Rambo, U.S. District Judge, M.D. PA, June 4

Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), June 5

Richard M. Bilby, U.S. District Judge, D. AZ, June 5

Lawrence K. Karlton, U.S. District Judge, E.D. CA, June 5

Warren W. Eginton, U.S. District Judge, D. CT, June 5

William J. Castagna, U.S. District Judge, M.D. FL, June 5

Orinda D. Evans, U.S. District Judge, N.D. GA, June 5

See PERSONNEL p.

THE THIRD BRANCH  
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ISSN 0040-6120

## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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## Bulletin of the Federal Courts

VOL. 11, No. 7

Published by the Administrative Office of the U.S. Courts and the Federal Judicial Center

July, 1979

### PROBATION INFORMATION SYSTEM APPROVED BY CENTER BOARD

At its June 25th meeting, the Board of the Federal Judicial Center approved the development of a computerized information management system for the Federal Probation System—Probation Information Management System (PIMS). Judge Gerald B. Tjoflat (CA-5), Chairman of the Judicial Conference Committee on the Administration of the Probation System, and Center staff, briefed the Board on the project which will require a major Center contribution to the development of a system that could be as large as the existing Courtran system.

For several years the Probation Committee has studied the possibility of developing a computerized information management system to improve the accessibility of accurate information for field probation officers, as well as to provide a national data base for budget, research and planning for all probation activities. At its September 1977 meeting the Judicial Conference endorsed the concept of such an information system and adopted four goals:

- Establish a modern information system for field managers;
- Provide up-to-date information to guide district judges in selecting sentences for convicted defendants;

See PIMS p. 2

### An Interview with Congressman Robert F. Drinan

#### A MEMBER OF THE HOUSE JUDICIARY COMMITTEE PROJECTS VIEWS ON THE FEDERAL COURTS

Congressman Robert F. Drinan of Massachusetts was elected to the U.S. House of Representatives in 1970 and has served continuously since. A Jesuit priest, he received his Doctor of Theology at the Gregorian University in Rome, and he earned his LL. B. at Georgetown University Law School in Washington, D.C. He was Dean of Boston College Law School from 1956 to 1970 and was a visiting professor for the academic year 1966-1967 at the University of Texas Law School.

In addition to leadership assignments in the House, Congressman Drinan serves on three major House Committees. He is Chairman of the House Subcommittee on Criminal Justice and as such he will play a prominent role in drafting and guiding through the House legislation to revise and codify federal criminal laws. It was especially because of the latter that he was sought out to learn in more detail his views on pending legislation which, if passed, will directly affect the federal courts.



ROBERT F. DRINAN

Congressman Drinan, it was reported that you were skeptical of the legislation that created the magistrates' positions in the federal court system; that, in lieu of this

legislation, you would have preferred a bill which would have created more Article III judgeships?

I dissented on the bill that would expand the jurisdiction of federal magistrates. I think that this bill is unwise at this time for these two reasons. We recently put through a bill creating 152 new judgeships. This is the largest infusion of judicial manpower in the history of the Republic. Secondly, I have the hope that a bill abolishing diversity will, in fact, go through this Congress. When these two bills are operational, it seems to me that then, and only then, should we examine the question of whether we need more magistrates or whether we should extend the jurisdiction of magistrates.

See INTERVIEW p. 4



## HOUSE APPROPRIATIONS COMMITTEE IMPOSES DRASTIC CUTS IN TRAVEL AND OTHER EXPENSES

In the appropriation for "Travel and Miscellaneous Expenses," the House Appropriations Committee denied a requested increase for expenses of travel and expressed the view that the travel of new circuit and district judges should be absorbed through the adoption of various economy measures and a reduction in the number of conferences or meetings being attended by judges, clerks of courts, probation officers, and other judicial officers and employees.

Also denied was a requested increase for the printing of opinions and the Committee asked that the Administrative Office of the United States Courts conduct a survey to determine if such printing can

be done more economically.

The Committee approved an increase in the appropriation for the "Salaries and Expenses of Magistrates" to provide for the establishment of eight new full-time magistrates and the conversion of 12 part-time magistrates to a full-time status, as authorized by the Judicial Conference of the United States in September 1978 and March 1979.

The House Appropriations Committee, in the Judiciary Appropriation Bill for fiscal year 1980, included funds for the appointment of an additional secretary and law clerk by circuit judges. The Committee also authorized a second law clerk for district judges in lieu of a crier or crier-law clerk and included

funds for the implementation of the qualification standards recently adopted by the Judicial Conference for a grade JSP-1 law clerk. The Committee denied increases in the central legal staffs of the courts of appeal and requested that study be made to determine the need for such central staffs.

With respect to the bankruptcy courts, the Committee approved \$57 million, an increase of \$21.7 million over the amount appropriated for 1979 but \$10.8 million less than the amount requested. Provision has been made for the appointment of a law clerk to each full-time bankruptcy judge and the appointment of mid-level management personnel for the bankruptcy clerks' offices. Funds also have been provided for the reclassification of secretaries and other personnel in the bankruptcy courts as contemplated by the Bankruptcy Reform Act. The Committee denied a request for full-time salaried court reporters and, in lieu thereof, included funds for contractual reporting services. The Administrative Office of the United States Courts has addressed a letter to the Chairman of the Senate Appropriations Subcommittee requesting the restoration of \$3 million to be used primarily for the procurement of additional legal research material and upgrading the libraries of bankruptcy judges.

The Committee approved a request in the amount of \$3.5 million to enable the Federal Probation System to provide special supervision and services to drug dependent offenders. The responsibility for such services is being transferred from the Bureau of Prisons to the Federal Judiciary in fiscal year 1980 pursuant to the Drug Dependent Federal Offenders Act.

With regard to "Space and Facilities," the Committee

PIMS from p. 1

- Generate national statistics for budget, planning and management control purposes; and


- Create a data base for research.

The first step in the development of PIMS will be to produce a functional description of the project, translating these general goals and objectives into a precise definition of exactly how the system will operate and how users will interact with the system. This phase will take place over the next 18 months, and will be accomplished by a task force composed of representatives from various probation offices, the Probation Division of the Administrative Office, and one person from the Center's Division of Innovations and Systems Development.

Until the functional description is complete, it will not be possible to define accurately the resources that will be required to implement PIMS on a

nationwide basis or to estimate accurately the length of the development period.

To move PIMS from the functional description to a working system, the Center will assume the responsibility for the technical system design, software development and all required documentation and training actions required to pilot test PIMS in a selected number of probation offices. Since the Administrative Office will ultimately assume the responsibility for the maintenance and implementation of PIMS, representatives from the Information Systems Division of the Administrative Office will participate in the software development process.

Parallel with Center development and pilot testing action, the Administrative Office will develop plans and acquire all the necessary computer hardware and personnel required to implement PIMS on a nationwide basis. 


See APPROPRIATIONS p. 3



## APPROPRIATIONS from p. 2

expressed concern over the substantial growth in the space inventory of the Judiciary and stated that it "does not believe that existing facilities are being fully utilized." The Committee also "does not believe that bankruptcy judges and magistrates require facilities comparable to those being provided circuit and district judges." The Judicial Conference of the United States has been asked to reconsider the standards and guidelines relating to courtrooms, hearing rooms, chambers, and general office space of these judicial officers. The Committee reduced the appropriation by \$7 million with the understanding that the United States Marshals Service in fiscal year 1980 would assume responsibility for court security, thus obviating the need for the Judiciary to augment the level of protective services being provided by GSA on a reimbursable basis. Additional funds and personnel are being provided to the Department of Justice for this purpose.

The bill is expected to be approved by the House in the very near future.

Senate action on the bill is expected within the next several weeks. If there are any differences between the House and Senate approved bills, normal procedures would be to attempt resolution of these differences in conference. Any funds included for additional personnel or other purposes could not be available until next October. 



Photographs by D.P. Bergen, Jackson Lake Lodge, Jackson Hole, Wyoming.



Mr. Justice White, Circuit Justice for the Tenth Circuit, received a standing ovation following his annual address to the Circuit. Pictured with him are (top left to right) Judge William J. Holloway, Jr.; Dean E. Gordon Gee, from J. Reuben Clark Law School, Brigham Young University; Judge Sherman G. Finesilver (Dist. Colo.); and Dean Daniel S. Hoffman of the University of Denver College of Law. The two deans joined Judge Finesilver for a panel discussion of the tentative report of the Judicial Conference Committee to Consider Standards for Admission to Practice in the Federal Courts. Associate Attorney General Michael J. Egan (pictured immediately above) addressed the Tenth Circuit last month on "Legal Representation of the Federal Government." Judge James K. Logan (left) introduced General Egan.

## COMPUTER-AIDED EXERCISE TESTED BY JUDGES

The Division of Continuing Education and Training of the Federal Judicial Center currently is engaged in a series of pilot projects, the purpose of which is to explore and test alternative educational resources for use by federal court personnel. The first phase of one project dealing with computer-aided exercises was completed during the week of

the Seminar for Newly Appointed District Judges, June 18-23. Of the new judges invited to the seminar, approximately 70% volunteered to proceed through a one and one-half hour computer-generated exercise based on the federal rules governing character evidence.

See COMPUTER p. 7

## The Third Branch

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.



## AN INTERVIEW WITH CONGRESSMAN ROBERT F. DRINAN

from p. 1

My fundamental objection to the magistrates comes to this. A magistrate, after all, is not appointed by the President of the United States; he is not confirmed by the Senate, he does not have life tenure. He is the creature of a federal judge or several judges. It seems to me, therefore, that we should not encourage the proliferation of magistrates nor should we expand their jurisdiction when the great glory of the federal judiciary is the fact that under the Constitution we give them life tenure with a commitment of nondiminution of compensation. We should therefore have tenured judges, Article III judges, whenever possible.

**It appears that the abolition of diversity jurisdiction concept is getting more attention in Congress recently and that legislation to bring this about may pass during this session. Do you believe this legislation will be enacted during this Congress?**

It passed the House of Representatives 2 to 1 in the last Congress and I think it's an idea whose time has come. I think that the only people who will object to this bill will really be those attorneys involved in personal injury litigation on either side. Some years ago we did increase the *ad damnum*. We could increase that to \$50,000 but I don't think that's going to cure the problem. The fact of the matter is that there are 32,000 diversity cases now in federal courts. We now have about 6,000 general jurisdiction state judges that really should be handling these 32,000 diversity cases.

No one knows precisely why the founding fathers gave that power in the Constitution to try cases in federal courts based on diversity, but I think that now there is no suggestion that there

is bias at the state level. The state chief justices have come out for the abolition of diversity. I think this would be a tremendous relief to the federal courts. It would remove cases that really shouldn't be there. It was back in 1955 that Justice Jackson called for the abolition of diversity and all of the best informed voices in the legal world since that time have followed Justice Jackson's recommendation. [Mr. Justice Jackson died October 9, 1954, but his lectures which included the proposal to eliminate diversity jurisdiction were published in 1955.] I have the hope that the abolition of diversity will become law in the 96th Congress.

**One member of the Senate Judiciary Committee recently said he would favor the abolition of diversity jurisdiction, but that he would prefer to except multidistrict litigation cases such as those filed as a result of a mass disaster, where many cases are filed in multiple districts. Would you insist on this exception being added to any diversity legislation?**

It may well be a very reasonable suggestion. I would hope that the federal courts could by the exercise of their rule-making power bring about this same result. In any event, I don't think that this issue should in any way interfere with the abolition of diversity jurisdiction.

**A new Foreign Intelligence Surveillance Court has been established in the Judicial Branch. Would you like to comment on its significance?**

I was opposed to the enactment of the Foreign Intelligence Surveillance Act last year. It seems to me that we should not permit an intelligence agency to go into a federal court and, absent any probable

cause of crime, obtain in the federal court a warrant to do surveillance by way of eavesdropping or wiretapping. This is a total departure from the whole history of American law.

We have always said that if there can be some exception to the Fourth Amendment, which forbids unreasonable searches and seizures, that exception can only be in the instance where law enforcement people have probable cause to believe that a crime has been committed or a crime is about to be committed. We have violated that fundamental principle in the Foreign Intelligence Surveillance Act. We have allowed the intelligence agencies to go to a federal court and, without any suggestion that crime is about to be committed, or has been committed, obtain a warrant to do surveillance only to get information which they will allege is necessary for the conduct of the foreign policy of this country. I have the most serious misgivings about this. It will be tested I assume for its constitutionality in the courts.

Furthermore, this measure introduces secrecy in the federal courts, a totally unknown concept up to now. No one will ever see who gives the surveillance order or for what purposes. All of that will be impounded forever. In addition, there is a new principle that The Chief Justice has to appoint the judges to this particular surveillance court on a rotating basis. It seems to me, that's a new and undesirable quality to bring into the federal judiciary. In essence, I think that this was done in the name of cleaning up the intelligence agencies and I am afraid that it's a very significant departure from fundamental law and constitutional principles in this country.

**Senator Heflin, in a recent**



**Third Branch** interview, said he was very opposed to mandatory arbitration even though a trial de novo is provided for.

I think the Senator is right. It seems to me that we should have all types of mediation and conciliation. We should have informal arrangements by which judgments are arrived at or claims are settled, but I am opposed to mandatory arbitration. I think that is the denial of justice and I hope that nothing like that is ever adopted in the federal system.

**The greatest undertaking in the House Judiciary Committee and your Subcommittee on Criminal Justice will probably be to draft a bill to codify, revise and reform Title 18 of the United States Code and to revise sentencing procedures. Are you optimistic for passage of such legislation during this Congress?**

I am relatively optimistic. This bill passed the Senate last year. It seems to me that its enactment would be a magnificent contribution to the administration of criminal justice. This goes back some ten years to the recommendations of the Brown Commission set up by the Congress itself. It became S.1 [S.1437, 95th Congress] and then features were added to it which were unacceptable to civil libertarians. But the fact of the matter is there is a desperate need to bring about some consistency in the sentences that are given by all of the federal judges in this country. I have hopes that the reform of Title 18 can go forward in the Congress this year and that a relatively reform minded bill can, in fact, become law.

**Do you believe it will be possible to enact a comprehensive revision of the federal criminal code, or will it be necessary to enact piecemeal legislation?**

Right now we have a comprehensive revision coming out of my subcommittee. I don't think really that you can enact

piecemeal reform, because if you revise the whole sentencing procedure and if you clarify the crimes and bring them together it seems to me that you can't separate out any of the parts. I would hope, therefore, that comprehensive revision of the federal criminal code will be possible and obtainable.

**Are you working closely with the Senate?**

Every day, almost, we are in touch with Senator Kennedy and his staff. We hope that very soon, certainly by September, we can file a joint bill so that the matter will move forward and differences can be resolved. Obviously reasonable people feel very sharply about some of these issues, but I have the hope that the essence of the Brown Commission, the essence of the model penal code, can in fact become federal law. This is not as new as some people would suggest. Thirty-five states have, in fact enacted criminal codes and I think that the time to do this at the federal level has now come.

**What do you believe now will be the most controversial subjects as you start drafting legislation?**

Obviously sentencing is going to divide people. Should we phase out the Parole Commission or should we give them more power? Also, the severity of the sentences. Some people feel that we should increase the sentences. Many people feel that we should decrease them. Those are issues which polarize people. I hope that we can come out with a compromise formula which will be acceptable.

**At the last meeting of the ABA House of Delegates they approved a Resolution, a part of which reads: "rules relating to culpability, complicity, criminal responsibility of organizations and of agents acting in their behalf, attempt, solicitation, and conspiracy should be clearly and carefully drawn..."**

It would appear from this

that the members of the Section of Antitrust Law and the Section of Corporation, Banking and Business Law are concerned that proposed legislation relating to this aspect of criminal law might be construed too narrowly; that corporate officers would then be made personally accountable for actions directly related to their business. Would you care to comment on this?

Well, I agree totally with the ABA that if we are going to have any new crimes, particularly on groups, we should be very, very careful about the definition of complicity and attempt and culpability in criminal responsibility. The ABA endorses this codification of criminal law at the federal level. We hope to retain their cooperation on a continuing basis. We will add some severe fines for corporate activity that is illegal and I would hope that the ABA and the House and Senate Judiciary Committees will come to a consensus on how we

See INTERVIEW p. 6

### **OPENING FOR COURT REPORTER, VIRGIN ISLANDS**

#### *Minimum Qualifications:*

Four years of court reporting experience in the freelance field of service or in other courts, or a combination thereof and a certificate of proficiency from the National Shorthand Reporters Association.

*Salary:* Commensurate with background and experience.

*To apply:* Send resume to Judge Almeric L. Christian, Judge of the District Court, Territory of the Virgin Islands, P.O. Box 720, St. Thomas, Virgin Islands 00801.



## CHIEF JUSTICE REPORTS ON EFFORTS TO IMPROVE QUALITY OF ADVOCACY

In remarks before the Fourth Circuit Judicial Conference June 29, Chief Justice Warren E. Burger reported on efforts of the bench, bar and law schools to improve the quality of advocacy in the federal courts. The Chief Justice said:


"It is now nearly three years since the Judicial Conference of the United States took note of what it believed to be widespread dissatisfaction with the quality of the professional performance of a good many of the lawyers coming into the federal courts.... That committee has now been studying the problem and it has undertaken to sound out the views of a great many people throughout the country in hearings on five different occasions throughout the United States.

"Judge Edward Devitt,

INTERVIEW from p. 5

should punish the white collar crime and how we should, in a word, "crack down" on such crime.

Senators, congressmen, and federal officials, including federal judges, are now required by public law to file financial disclosure forms. Some of the judiciary have objected to the filing based on, among other things, a separation of powers concept. Do you care to comment on that?

Yes, I would and I think that the judges' point is well taken. I think that the Congress should reexamine that law by which we impose on members of the judiciary disclosure requirements as regards their income. It seems to me that it is legitimate on the Executive Branch for cabinet members in certain categories, but I have a most serious question as to whether this is permissible or appropriate for the federal judiciary. 

Chairman of the Judicial Conference Committee, sums up more than two years intensive study: 'The controversy is not over whether we need to improve the quality of advocacy in federal courts. Rather, the focus of the debate is how we can best do this.' Implicit in his summary is also 'Who will do it?'

"Meanwhile, following the meeting of the American Bar Association in New York last August, the task force on lawyer competency and the role of the law schools was directed to study the question.

"That task force has now filed a report which reflects what seems to me a significant change in attitudes concerning legal education. Chaired by Dean Roger Cramton of Cornell Law School, they urge that: 'Law schools should provide all students with instruction in such fundamental skills as oral communication, interviewing, counselling and negotiation. Law schools should also offer instruction in litigation skills to all students desiring it.'

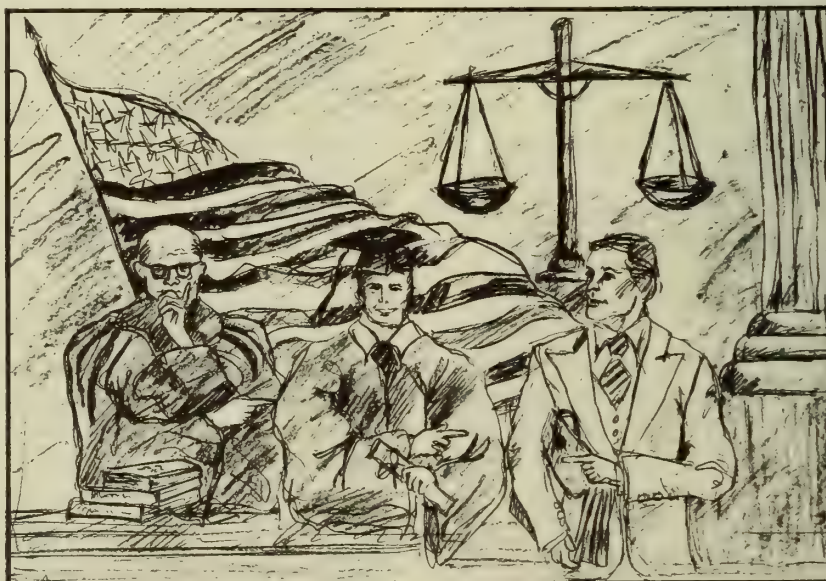
"The ABA task force report tells us that *all* students who want this training should receive it, and yet the testimony of law school deans before the

Judicial Conference Committee was that only one-third of the students who want such training can secure it at present.

"The law schools have done well in preparing students in legal analysis and legal thinking but where the law schools have not performed as well is in training in the elements of advocacy. Courtroom advocacy must be taught by experienced trial lawyers backed up by trial judges who preside over trials. Those of us who have pressed this point for years have emphasized at all times that it is a joint enterprise. The law schools must lay the foundation and the trial judges and the legal profession, through the bar associations, must take up where the law schools leave off.

"But in this very process there must be a new relationship between the three branches of our profession. Trial lawyers and trial judges must work directly with the law schools. Whatever barriers exist to having practicing lawyers integrated into this aspect of law teaching must be broken down, and there are encouraging signs that some of the old attitudes on this score are changing. The American College of Trial Lawyers, with over three thousand members who specialize in litigation, has

See ADVOCACY p. 7



"Advocacy is not my responsibility, it's his."



## ADVOCACY from p. 6

pledged to support these efforts in cooperation with the law schools. That means that some of the best trial advocates in the United States are prepared to perform these services.

"We are told by some legal educators that on their present budgets they cannot do much more than they are now doing in advocacy training. Other educators tell us it is not the function of a law school to provide such training. Still others suggest all specialty training is a graduate school function. Some leaders of the bar tell us that all this is the responsibility of the law schools, not the bar. To complete this vicious circle, some judges now tell the Judicial Conference Committee it is not the responsibility of the courts to assure that the advocates who appear before them are adequate.

"But this is a responsibility shared by all three. Each must contribute what it can do best. Law teachers are skilled at organizing teaching; trial lawyers are skilled in the art of advocacy. Trial judges know what skills are needed and they are painfully aware that lack of skills makes a three day case run six, eight or ten days. There is one area which is the particular responsibility of the organized bar, and that is to see that law schools are provided with the necessary financial support. They must go to the legislatures in support of what the law schools need.

"There is one direct solution: The American Bar Association established its standards for accrediting law schools more than a half century ago. Those standards represent one of many great contributions of that association to our profession and to the administration of justice. In that accrediting process, it prescribes standards that law schools are required to

See ADVOCACY p. 8



Last month 32 newly appointed U.S. District Judges assembled at the Federal Judicial Center for a week-long seminar. Photographed above are part of the group who gathered at the Supreme Court for the dinner held in conjunction with the seminar.

## CALENDAR from p. 8

- Aug 27-29 Instructional Technology Workshop; Orlando, FL
- Aug 27-30 Workshop for Chief Deputy Clerks; Salt Lake City, UT
- Aug 28 Judicial Conference Committee on the Budget; Morgantown, W VA
- Aug 29-31 Seminar for Bankruptcy Judges; San Francisco, CA
- Sept 10-12 Third Circuit Judicial Conference; Hershey, PA**
- Sept 10-14 Advanced Seminar for U.S. Probation Officers; Hartford, CT
- Sept 12-14 Seminar for Bankruptcy Judges; Chicago, IL
- Sept 12-15 Workshop for Clerks of Bankruptcy Courts; St. Louis, MO
- Sept 17-20 Workshop for Clerks of Bankruptcy Courts; Reno, NV
- Sept 17-21 COURTRAN II STARS and INDEX Training; Washington, DC (Date tentative)
- Sept 18-21 Effective Productivity For Court Personnel; Phoenix, AZ
- Sept 19-20 Judicial Conference of the U.S.; Washington, DC**
- Sept 21 Circuit Chief Judges Meeting; Washington, DC**
- Sept 24-28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN
- Sept 25-28 Effective Productivity for Court Personnel; Cleveland, OH

- Sept 26-28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ
- Sept 27-28 Advisory Committee on Criminal Rules; Washington, DC

## COMPUTER from p. 3

Seated at computer terminals, the judges worked their way through four cases, hypothetical as well as actual, dealing with problems related to the introduction of character evidence.

Because the Center is interested in the possible use judges might make of such exercises as an independent study aid, each judge proceeded through the program at his or her own rate of speed. After completing the exercise, each judge was given an evaluation form on which to register attitudes, recommendations, and overall appraisal.

The tabulated and collated results of these evaluations will be used in determining whether the Center ought to fund the development of a series of exercises dealing with various procedural and problematic areas of the law. ■



# doocjc calendar

- Aug 1-3 Seminar for Bankruptcy Judges; St. Petersburg, FL  
 Aug 6-9 Workshop for Chief Deputy Clerks; Atlanta, GA  
 Aug 6-10 Orientation Seminar for U.S. Probation Officers; Washington, DC  
 Aug 7-10 Effective Productivity for Court Personnel; San Francisco, CA  
 Aug 13-16 Orientation Seminar for Part-Time Magistrates; San Francisco, CA  
 Aug 13-17 Advanced Seminar for U.S. Probation Officers; St. Louis, MO  
 Aug 20-23 Workshop for Clerks of Bankruptcy Courts; Wilmington, DE

## POSITION AVAILABLE IN EIGHTH CIRCUIT

*Position:* Clerk, U.S. Court of Appeals for the Eighth Circuit, St. Louis, Missouri.

*Salary:* \$38,160 to \$44,756 (JSP 15 or 16) commensurate with qualifications.

*Qualifications:* Proven management and administrative skills. Law related or court background preferred.

Application and resume should be sent to R. Hanson Lawton, Circuit Executive for the Eighth Circuit, 853 U.S. Courthouse, Kansas City, Missouri 64060.

Aug 20-23 COURTRAN II STARS and INDEX Review; Washington, DC

Aug 22-24 Seminar for Bankruptcy Judges; Cherry Hill, NJ

Aug 22-24 Advanced Rational Behavior Workshop; Orlando, FL

**Aug 22-25 Eighth Circuit Judicial Conference; Rapid City, SD**

See CALENDAR p. 7

## ADVOCACY from p. 7

meet. If other solutions are not developed the Association can solve this problem by establishing what law schools must do in the field of enlarged training in the basic elements of advocacy for those who want it. Probably law schools have the right, for example, to prescribe some means to identify the aptitude of such applicants for trial advocacy.

"The ultimate authority therefore rests with the American Bar Association and ultimate responsibility accompanies authority. But this by no means should be treated as an excuse for any segment of the profession to evade our collective responsibility of the profession as a whole.

"We spend approximately twelve times as much to train a doctor to care for patients as we do to train lawyers. We must spend more to prepare lawyers to care for the vital rights dealt with in the courtrooms." ■■

# PERSONNEL

## NOMINATIONS

- George Arceneaux, Jr., U.S. District Judge, E.D. LA, June 12  
 James M. Sprouse, U.S. Circuit Judge (CA-4), July 9  
 Matthew J. Perry, Jr., U.S. District Judge, D. SC, July 9

## CONFIRMATIONS:

- J. Jerome Farris, U.S. Circuit Judge (CA-9), July 12  
 Betty Binns Fletcher, U.S. Circuit Judge (CA-9), July 12  
 James C. Paine, U.S. District Judge S.D. FL, July 12  
 Benjamin F. Gibson, U.S. District Judge, W.D. MI, July 12  
 Douglas W. Hillman, U.S. District Judge, W.D. MI, July 12  
 R. Lanier Anderson III, U.S. Circuit Judge (CA-5), July 12  
 Albert J. Henderson, U.S. Circuit Judge (CA-5), July 12  
 Reynaldo G. Garza, U.S. Circuit Judge (CA-5), July 12  
 Carolyn D. Randall, U.S. Circuit Judge (CA-5), July 12  
 Henry A. Politz, U.S. Circuit Judge (CA-5), July 12  
 Francis D. Murnaghan, Jr., U.S. Circuit Judge (CA-4), July 12  
 Joseph W. Hatchett, U.S. Circuit Judge (CA-5), July 12  
 Thomas M. Reavley, U.S. Circuit Judge (CA-5), July 12

## RESIGNATION

- Finis E. Cowan, U.S. District Judge S.D. TX, June 30

## THE THIRD BRANCH

VOL. 11, No. 7 JULY, 1979  
 ISSN 0040-6120

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## Bulletin of the Federal Courts

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VOL. 11, No. 8

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AUGUST, 1979

### PRESIDENT SIGNS SPEEDY TRIAL ACT AMENDMENTS

The Speedy Trial Act of 1974 has been amended by Public Law 96-43, signed by President Carter August 2, 1979. The law, which passed the Senate on June 19, passed the House with amendments on July 31. The Senate accepted the House amendments on the same day, sending the measure to the President.

The new law provides for a one-year postponement of the dismissal sanction, which will now "become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed on or after July 1, 1980." No effective date was provided for in

the amending legislation itself, and it therefore became effective when signed. Because the dismissal sanction was in effect from July 1 through August 1, 1979, some question remains about its applicability to cases pending before the amendments became law.

The Senate bill had provided for a two-year postponement of the dismissal sanction. The House cut the postponement to one year. With that exception, the major features of the legislation are unchanged from those of the Senate bill, reported in the June issue of *The Third Branch*. ■■

### AMENDMENTS TO SOME FEDERAL RULES DELAYED: OTHER AMENDMENTS APPROVED

The effective date of certain amendments to the Federal Rules of Criminal Procedure and the Federal Rules of Evidence has been delayed conditionally as a result of the passage of a new law, PL 96-42, signed by the President on July 31, 1979. The affected amendments were a small part of a package of proposed amendments to various sets of rules submitted to Congress by The Chief Justice on behalf of the Supreme Court on April 30, 1979. Those proposed amendments not within the ambit of PL 96-42 took effect as originally scheduled on August 1, 1979.

Delayed by the new statute are amendments to the following Rules of Criminal Procedure: 11 (e)(6), relating to the admissibility of pleas, plea discussions, and related statements; 17 (h) and new Rule 26.2, relating to the production of statements of witnesses; 32 (f) and new Rule 32.1 relating to revocation or modification of probation; and 44 (c), relating to joint representation of two or more defendants by the same retained or assigned counsel. The effective date of these amendments has been postponed until December 1, 1980, or until an Act of Congress, whichever occurs earlier. Additionally, the amendments to Federal Rules of Criminal Procedure

See AMENDMENTS page 3

### REPORT ON NEW JUDGESHIPS

The Department of Justice reports that, as of the beginning of the recent congressional recess, 40 nominations for new judgeships—28 district and 12 circuit—under the Omnibus Judgeship Act have been confirmed by the Senate.

Forty-six presidential nominations—10 circuit and 36 district positions—have been made and are awaiting Senate confirmation.

Approximately 40 potential nominees—about 10 circuit and 30 or more district positions—

are presently under active investigation in the Executive Branch, and it is hoped that half of these investigations will lead to nominations before Congress returns on September 5.

Of the 152 federal judgeships created by the Act, only fifteen or so have had no action taken thus far.

Regarding judgeships existing prior to passage of the Omnibus Judgeship Act, there are currently 31 vacancies—3 circuit, 27 district and one on the Court of Customs and Patent Appeals.



## NATIONAL INSTITUTE OF JUSTICE AND LEAA

With legislation pending to extend the funding of the Law Enforcement Assistance Administration beyond the expiration date of September 30, 1979, the concept of establishing a National Institute of Justice has recently received added attention. Obviously, whatever legislation is passed will affect the future of both LEAA and, if it is ultimately established, the proposed Institute. The National Institute of Justice received the endorsement of the American Bar Association's House of Delegates in 1971 and varying drafts of legislation have periodically been introduced since that time.

In a recent interview with Congressman Robert W. Kastenmeier of Wisconsin, the Congressman was asked about his views on this subject. As Chairman of the House Subcommittee on Courts, Civil Liberties and the Administration of Justice, the Congressman's statements will have special interest for all those working in the courts, state and federal. The questions and his replies follow.

### Do you favor the National Institute of Justice concept, Mr. Kastenmeier?

Ultimately as a replacement for the Law Enforcement Assistance Administration, yes. This is because law enforcement assistance rises out of a somewhat narrow notion of the federal system aiding state and local governments with respect to



Shown above are participants in a workshop at the seminar for recently appointed probation officers (see related picture page 3). Workshop topics included the presentence report and an exercise in sentencing problems.

fighting crime through traditional law enforcement entities. Recently, we have discovered that over time we have loaded into LEAA things that are really scarcely related or tangential to the original mandate. Aiding correctional facilities and the courts are examples. Many other things truly do not belong there. It would have been better as we learned of these other problems to redescribe nationally an agency which could more rationally treat these areas, rather than to address whether or not the peripheral area aids in apprehension of the lawbreaker. This is the present system which stretches LEAA too far.

### Do you favor having it in the Department of Justice?


I would not necessarily insist that it be in the Department of Justice; that is merely one notion. It might well be outside of the Department of Justice. I do think the Department of Justice, acting through the Attorney General, could and should play a prominent role in any such entity. I really have no fixed view on how it should be formed or where it should be situated

organizationally. I am very open-minded on that question.

### Do you recall the objection to locating a National Institute of Justice in the Department of Justice when it was first suggested?

Yes, and perhaps in due course it would be called something else and treated quite differently. What I am saying is that there is room for a national umbrella to encompass some of the activities we have just discussed. The Law Enforcement Assistance Administration does not appear to be the best long term vehicle for that purpose.

\* \* \* \* \*

As recently as August 13, Senator Howell Heflin, who is a member of the Senate Judiciary Committee, in a speech at the annual meeting of the American Bar Association recommended that further study be made of the Conference of Chief Justices' proposal to establish a State Justice Institute. The Senator said such an institute could fund programs for the state courts, whether or not LEAA is continued. 

Published monthly by the Administrative Office of the U.S. Courts and the Federal Judicial Center. Inquiries or changes of address should be directed to: 1520 H Street, N.W., Washington, D.C. 20005.

#### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.





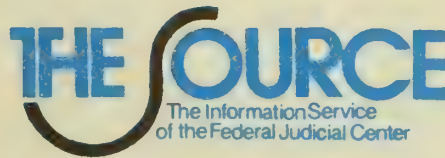
Recently appointed probation officers from across the United States met at the Federal Judicial Center for an orientation seminar, August 6-10. Robert N. Altman (at lecturn) from the Probation Division, Administrative Office of the United States Courts, spoke on the probation officer and the community. Subjects presented by others included the role of the probation officer in supervising probationers, ethics of the probation officer and pretrial services.

#### AMENDMENTS from page 1

40 took effect as planned on August 1 of this year, but references in subparagraphs (d)(1) and (d)(2) to the proposed new Rule 32.1 (a) have been deleted.

The other consequence of PL 96-42 is to postpone, pursuant to the above schedule, those amendments to Federal Rule of Evidence 410 relating [in a manner consistent with the now-postponed amendments to Federal Rules of Criminal Procedure 11 (e)(6)] to the admissibility of pleas, plea discussions and related statements.

Unaffected by PL 96-42 were the amendments proposed to the following rules: Federal Rules of Criminal Procedure 6(e), 7 (c)(2), 9 (a), 11 (e)(2), 18, 32 (c)(3)(E), 35 and 41 (a), (b) and (c)(1); Federal Rules of Appellate Procedure 1 (a), 3 (c), (d) and (e), 4 (a), 5 (d), 6 (d), 7, 10 (b), 11 (a), (b), (c) and (d), 12, 13 (a), 24 (b), 27 (b), 28 (g) and (j), 34 (a) and (b), 35 (b) and (c), 39 (c) and (d) and 40; Rule 10 of the Rules Govern-



Publications are primarily listed for the reader's information. Those in bold face are available from the FJC Information Services Office.

Law of Sentencing. Arthur W. Campbell, Lawyers Cooperative Publishing Co., 1978.

New Settlement Techniques for the Trial Judge. Julius M. Title. 18 Judges' J. 42-49

ing Proceedings in the United States District Courts on application under Section 2254 of Title 28, United States Code; and Rules 10 and 11 of the Rules Governing Proceedings in the United States District Courts on a motion under Section 2255 of Title 28, United States Code. All of the above amendments became effective as originally scheduled on August 1, 1979.

#### COMMUNITY RELATIONS SERVICE

The Community Relations Service (CRS) of the Department of Justice offers federal courts an alternative to litigation in cases relating to civil rights. Generally, CRS can mediate any racial or ethnic dispute. These have included suits alleging civil rights violations, a suit brought by a predominately black subdivision against public utility companies, and alleged discrimination in stores, restaurants and other public places. CRS was created by the Civil Rights Act of 1964 to help racially troubled communities solve their problems.

Federal courts have referred

See CRS, page 5

(Winter 1979).

The Non-Precedential Precedent - Limited Publication and No-Citation Rules in the United States Courts of Appeals. William L. Reynolds & William M. Richman. 78 Colum. L. Rev. 1167-1208 (Oct. 1978).

Of Frankenstein Monsters and Shining Knights: Myth, Reality, and the "Class Action Problem". Arthur R. Miller. 92 Harv. L. Rev. 664-694 (Jan. 1979).

Proceedings of the Thirty-Ninth Annual Conference of the District of Columbia Circuit. 81 FRD 263-360 (May 1979).

Report to the President and the Attorney General. National Commission for the Review of Antitrust Laws and Procedures. 80 FRD 509-623 (Mar. 1979).

Speedy Trial Act — Its Impact on the Judicial System Still Unknown. U.S. Comptroller General GAO, May 5, 1979.

Ten Commandments for the New Judge. Edward J. Devitt, 65 ABA J. 574-576 (April 1979).

When Prisoners Sue: A Study of Prisoner Section 1983 Suits in the Federal Courts. William Bennett Turner. 92 Harv. L. Rev. 610-663 (Jan. 1977).



## TEXT ON PRISONER CIVIL RIGHTS LAW PUBLISHED


A comprehensive resource volume on the complex case law in the area of prisoner litigation is now available on request.

Titled *Compendium of the Law on Prisoners' Rights*, the text begins with a detailed comparison of habeas corpus and prisoner civil rights petitions and proceeds to examine in depth the various aspects of the latter causes of action. It discusses the opinions on *forma pauperis* petitions and the frivolous and malicious test; it reports on the requirements for causes of action under 42 U.S.C. § 1983 and presents the cases brought under the various sections of and amendments to the Constitution; it analyzes defenses to these petitions as well as descriptive motions under the federal rules; and it covers the various aspects of the relief stage of these cases.

The compendium has been made available to the federal judiciary, through the Judicial Center, by the Prisoner Civil Rights Committee of the Center.

It was originally compiled by U.S. Magistrate Ila Jeanne Sensenich of the Western District of Pennsylvania as part of her own research in the area, and expanded by her at the Committee's request as part of its ongoing study of the problems confronting federal courts in prisoner cases.

Although the work is an individual effort and does not purport to reflect the views of either the Committee or the Center, it will serve as an effective research tool for judges, magistrates and other members of the federal judiciary. It has been prepared in a loose-leaf format to accommodate insertions and necessary updates that would be performed by the users of the document. For example, the Supreme Court decision in *Bell v. Wolfish* was handed down just as the compendium was going to press.

Copies of the compendium may be obtained from the Information Services Office of the Federal Judicial Center. 

## POSITION AVAILABLE IN WESTERN DISTRICT OF WASHINGTON

**Clerk, United States Bankruptcy Court for the Western District of Washington at Seattle.**

**Salary:** \$38,160-\$44,756 (JSP 15-16). Starting salary and grade commensurate with applicant's qualifications.

**General Description:** The Clerk of the Bankruptcy Court must have the ability to organize and manage the Court system as set out in the Bankruptcy Reform Act of 1978, effective October 1, 1979. The Clerk will not only serve the Court as its principal executive officer, but will also be involved in the selection of bankruptcy trustees and the monitoring and auditing of bankruptcy cases.

**Qualifications:** Graduate degree, Business or Public Administration preferred; at least five years administrative or professional experience in public service or business; and knowledge of modern personnel management principles and methods. A knowledge of the legal system and court procedures is valuable, and formal education, training and experience in court management is particularly relevant.

**To apply:** Submit a detailed resume by September 1, 1979, to: Honorable Sidney C. Volinn, Chief Bankruptcy Judge, 220 U.S. Courthouse, Seattle, WA 98104.

## doofjc calendar

Aug 29-31 Seminar for Bankruptcy Judges; San Mateo, CA

Sept 10-12 Third Circuit Judicial Conference; Hershey, PA

Sept 10-14 Advanced Seminar for U.S. Probation Officers; Hartford, CT

Sept 11-13, In-Court Management Workshop for U.S. Probation Officers; Canadian, OK

Sept 17-20 COURTRAN II STARS Training; Washington, DC

Sept 18-19 Appellate Deputy Clerks Seminar (CA-10); Denver, CO

Sept 18-21 Effective Productivity for Court Personnel; Phoenix, AZ

Sept 19-20 Judicial Conference of the United States; Washington, DC

Sept 21 Meeting of Circuit Chief Judges; Washington, DC

Sept 21 Meeting of District Judge Delegates to Judicial Conference; Washington, DC

Sept 24-28 COURTRAN II STARS and INDEX Training; Washington, DC

Sept 24-28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN

Sept 25-27 In-Court Management Workshop for U.S. Probation Officers; Brainerd, MN

Sept 25-28 Effective Productivity for Court Personnel; Cleveland, OH

Sept 26-28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ

Sept 27-28 Advisory Committee on Criminal Rules; Washington, DC

Oct. 2-5 Sentencing Institute (CA-5); Dallas, TX

Oct 15-16 Workshop for District Judges (CA-7); Chicago, IL

Oct. 17-19 Conference of Metropolitan Chief Judges; Williamsburg, VA



## FEDERAL JUDICIARY GEARS UP TO CONSERVE ENERGY

In cooperation with the President's energy program, Chief Justice Warren E. Burger announced last month that the following steps will be taken at the Supreme Court:

- With the exception of small areas where there are technical problems such as the library and the computer room, building cooling is now limited to 78 degrees in warm months and heating is limited to 65 degrees during colder periods. Monitors are being appointed in all departments to assure compliance.

- "Turn Out That Light" signs throughout the building will remind employees to conserve lighting in the building. Two daily patrols will monitor unneeded lighting.

- Energy conservation efforts begun many months ago—at the onset of the energy shortage—will be continued. For example, alternate ceiling lights in the justices' corridor have been extinguished.

In addition to these efforts at the Supreme Court, The Chief Justice has written to all chief judges of the district and circuit courts as chairman of the Judicial Conference of the United States:

"I am fully aware of the problems of trying to conduct trials and other proceedings in excessively high temperatures. I am also aware that virtually all modern court buildings, that is those built within the last thirty years, are likely to have sealed windows. As a result the admission to open the windows is unrealistic.

"We have a national crisis in the use of energy, and for the past two months we have been making adjustments in the Supreme Court Building to cooperate with the national effort in this respect.

"Air conditioning and heating

are not the only factors in the consumption of energy. Modern office lighting consumes a great deal of energy, and in the Supreme Court Building, every office, without exception, has a prominently displayed sign, 'Turn Off That Light.' Obviously this does not mean turn off the lights at all times, but to turn them off when they are not needed, as when the occupant of that office goes to lunch or leaves for any significant period of time.

"I urge you to designate an 'energy monitor' for every office under the control of your court and to make every effort to reduce energy consumption."

## NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE

The National Criminal Justice Reference Service (NCJRS) is an information clearinghouse and reference service available to the federal judiciary. Because this service is relatively unknown, there are set forth below the types of services offered the federal judges and their supporting personnel. LEAA funded and functioning under the aegis of the National Institute of Law Enforcement and Criminal Justice, NCJRS has:

- A professional staff of reference specialists, knowledgeable in specific subject areas such as courts, corrections and sentencing, who respond to inquiries using a 37,000 document data base.

- Free microfiche copies of many documents in the NCJRS collection available upon request, as well as paper copies of selected documents.

- A document loan program making the entire NCJRS collection available to other libraries when public or organizational libraries submit an interlibrary loan form.

- A reading room and reference library maintained in

downtown Washington, D.C., at 1015 20th Street, N.W., that provides access to the NCJRS collection and many basic sources of information.

- A selective notification of information service through which NCJRS mails a monthly journal announcing publications and meetings to those who register for it. Registration forms and additional information may be obtained by writing to: NCJRS, Box 6000, Rockville, MD 20850.

## CRS from page 3

cases to CRS through several means. In the District of Massachusetts the Court postponed action in two suits alleging harassment of black families in Boston public housing while attempts were made by CRS to resolve some of the issues involved. In the Western District of Michigan, the Court issued an order requiring all parties in desegregation efforts to cooperate with CRS. The Court in the Northern District of Ohio asked CRS to help Cleveland desegregate its public schools.

CRS activities, tailored to meet specific local needs, fall into eight categories:

- Public safety and school security.

- Citizen involvement

- Curbing problems in schools through improved discipline codes

- On-the-spot conciliation of disputes

- Identifying outside sources of assistance

- Providing liaison among affected parties, agencies, and institutions

- Training for school and police personnel

- Improving communications.

CRS offices are located in Atlanta, Boston, Chicago, Dallas, Denver, Kansas City (MO), New York, Philadelphia, San Francisco, Seattle, and Washington.



# PERSONNEL

*The following nominations were erroneously listed in The July Third Branch as confirmations:*

J. Jerome Farris, U.S. Circuit Judge, (CA-9), July 12  
 Betty Binns Fletcher, U.S. Circuit Judge (CA-9), July 12  
 James C. Paine, U.S. District Judge, S.D. FL, July 12  
 Benjamin F. Gibson, U.S. District Judge, W.D. MI, July 12  
 Douglas W. Hillman, U.S. District Judge, W.D. MI, July 12

## NOMINATIONS

James W. Kehoe, U.S. District Judge, S.D. FL, July 18  
 Dudley H. Bowen, Jr., U.S. District Judge, S.D. GA, July 19  
 Juan G. Burciaga, U.S. District Judge, D. NM, July 19  
 Barbara B. Crabb, U.S. District Judge, W.D. WI, July 21  
 Terence T. Evans, U.S. District Judge, E.D. WI, July 21  
 Eugene P. Spellman, U.S. District Judge, S.D. FL, July 21  
 Gene E. Brooks, U.S. District Judge, S.D. IN, July 27  
 Albert Tate, Jr., U.S. Circuit Judge (CA-5), July 31  
 William L. Beatty, U.S. District Judge, S.D. IL, July 31  
 Hugh Gibson, Jr., U.S. District Judge, S.D. TX, July 31  
 George J. Mitchell, U.S. District Judge, D. ME, July 31

Jerry L. Buchmeyer, U.S. District Judge, N.D. TX, Aug. 3  
 Alan N. Bloch, U.S. District Judge, W.D. PA, Aug 3

## CONFIRMATIONS

Marvin E. Aspen, U.S. District Judge, N.D. IL, July 23  
 Susan H. Black, U.S. District Judge, M.D. FL, July 23  
 James B. Moran, U.S. District Judge, N.D. IL, July 23  
 Richard P. Conaboy, U.S. District Judge, M.D. PA, July 23  
 Sylvia H. Rambo, U.S. District Judge, M.D. PA, July 23  
 Lawrence K. Karlton, U.S. District Judge, E.D. CA, July 23  
 Warren W. Eginton, U.S. District Judge, D. CT, July 23  
 William J. Castagna, U.S. District Judge, M.D. FL, July 23  
 Orinda D. Evans, U.S. District Judge, N.D. GA, July 23  
 Marvin H. Shoob, U.S. District Judge, N.D. GA, July 23  
 G. Ernest Tidwell, U.S. District Judge, N.D. GA, July 23  
 Robert L. Vining, Jr., U.S. District Judge, N.D. GA, July 23  
 Patricia M. Wald, U.S. Circuit Judge (CA-DC), July 24

## APPOINTMENTS

Jon O. Newman, U.S. Circuit Judge (CA-2), June 25  
 Amalya L. Kearse, U.S. Circuit Judge (CA-2), June 27  
 Valdemar A. Cordova, U.S. District Judge, D. AZ, July 3  
 Dolores K. Sloviter, U.S. Circuit Judge (CA-3, August 21

## THE BOARD OF THE FEDERAL JUDICIAL CENTER

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 United States Court of Appeals  
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Judge William H. Mulligan  
 United States Court of Appeals  
 for the Second Circuit

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 Northern District of Illinois

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 United States District Court  
 District of Columbia

Judge Otto R. Skopil, Jr.  
 United States District Court  
 District of Oregon

William E. Foley  
 Director of the Administrative Office  
 of the United States Courts

A. Leo Levin, Director  
 Federal Judicial Center

Joseph L. Ebersole, Deputy Director  
 Federal Judicial Center

## ELEVATIONS

Robert E. Varner, Chief Judge, M.I. AL, July 12  
 John V. Singleton, Chief Judge, S.D. TX, Aug. 1

## RESIGNATION

Robert H. McFarland, U.S. District Judge, Canal Zone, July 15

## DEATH

William B. Jones, U.S. District Judge, D.DC July 31.

## FIRST CLASS MAIL



THE THIRD BRANCH

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## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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UNIVERSITY OF ILLINOIS

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SEPTEMBER, 1979

### INTERVIEW WITH SENATOR EDWARD M. KENNEDY

Senator Edward M. Kennedy, who has continuously represented Massachusetts in the Senate since 1962, became Chairman of the Senate Judiciary Committee at the beginning of this session of Congress. In the following interview conducted earlier this summer, he comments on the work of the Committee and other matters affecting the federal judiciary.

There has been reference in the press and in your speeches to your plans for the Senate Judiciary Committee during this session of Congress. After over a half year of experience as Chairman of the Committee, are you satisfied that the Committee is making good progress?

I think we have made important progress in the first six months of this year, although at least a part of that time was spent in reorganizing our Committee structure and in welcoming to the Judiciary Committee a number of new members, both Democrats and Republicans, who I think have been a great addition to the Committee.

We have, first of all, reorganized the responsibility for oversight of the Justice Department. We have had the first comprehensive set of hearings on the work of the Justice Department; the clear intention of the hearings was to review Justice Department activities -- establish



EDWARD M. KENNEDY

benchmarks -- so that in future years we could better measure the performance of the Department. The goal is to focus more attention to and bring about a greater sense of priorities within the Department itself.

Secondly, we've completed the redrafting and reauthorization of the Law Enforcement Assistance Act, the principal instrument by which the federal government works with local communities and states in an area of high priority to the American people: crime. It was a major restructuring which was reported out unanimously from the Committee; we received very strong bipartisan support from the Senate itself when the bill passed 67 to 8. I think it's much better legislation than that which currently exists and I'm

See INTERVIEW p. 4

### TRUSTEES NAMED UNDER NEW BANKRUPTCY ACT

Pursuant to the terms of the Bankruptcy Reform Act of 1978, effective October 1, 1979, ten individuals have been appointed by the Department of Justice to serve as United States trustees in ten statutorily designated pilot areas. Under the new Act, the most comprehensive change in the bankruptcy laws since the Bankruptcy Act of 1898, these trustees will have general supervisory responsibilities over the administration of debtors' estates.

Named as pilot trustees were: William H. Tucker for the Districts of Maine, Massachusetts, Rhode Island and New Hampshire; Irving H. Picard for the Southern District of New York; Hugh M. Leonard for the Districts of Delaware and New Jersey; Francis Dicello for the District of Columbia and the Eastern District of Virginia; Billy Jack Rivers for the Northern District of Alabama; Arnaldo N. Cavazos, Jr. for the Northern District of Texas; David H. Coar for the Northern District of Illinois; William P. Westphal, Sr. for the Districts of Minnesota, North Dakota and South Dakota; James T. Eichstaedt for the Central District of California; and Dolores B. Kopel for the Districts of Colorado and Kansas.

In conformity with the new Act's simplification of existing law and the expansion of the jurisdiction of the bankruptcy

See TRUSTEES p. 2



## CHIEF JUSTICE CALLS FOR FEDERAL/STATE STUDY OF ALTERNATIVES TO JURIES IN PROTRACTED CIVIL CASES

In a speech last month before the annual meeting of state chief justices, Chief Justice Burger called upon the state judges to join with the federal judiciary in studying alternatives to the use of lay juries in protracted civil trials, defined as cases requiring a month or more to try.

In his call for cooperation, The Chief Justice pointed out several shortcomings in the present system: professional persons or others qualified to cope with complex economic or scientific questions rarely survive challenges in the jury selection process; protracted trials typically

raise factual issues of enormous complexity; a judge's explanation of legal issues may take not hours, but days; there is a limit to the ability of anyone, including a judge, to remember complicated transactions described in a long trial; and an enormous burden, bordering on cruelty, is imposed upon jurors drafted to sit in a totally strange environment for long periods of time trying to cope with issues largely beyond their grasp.

The Chief Justice noted that the framers of our Constitution had no experience to guide them in framing standards for the kind of complex cases which are the

daily fare of courts today. Although the framers did an extraordinary job in anticipating problems of the future, it would be asking too much, The Chief Justice said, to ask them to have anticipated the problems of using juries in modern civil litigation. "Even Jefferson would be appalled at the prospect of a dozen of his yeomen and artisans trying to cope with some of today's complex litigation in a trial lasting many weeks or months."

To exemplify the problem, The Chief Justice cited at length a colloquy between a trial judge and an exhausted jury foreman on the morning of the seventh day of deliberations following a five-month trial of a criminal antitrust prosecution. The foreman reported that many jurors were taking tranquilizer pills by a doctor's order, and that, in the face of exhaustion and personality conflicts, no unanimous verdict beyond a reasonable doubt appeared possible. The frustrated judge could only ask the jury to deliberate a while longer.

Chief Justice Burger commented that our history of these kinds of experiences, years of critical analyses by the commentators, and England's 42 year abolition of civil juries all constitute sufficient justification for a careful and necessarily long-term study of a more selective use of juries in certain categories of civil cases.

In the interim, before such a study could be completed, The Chief Justice called upon innovative lawyers to waive juries in complicated civil cases. Anticipating concerns over the submission to a single judge in economic, business or environmental matters, he stated that he could see no reason why complicated cases could not be tried by stipulation before a three judge panel. Let the past be a disincentive to

### TRUSTEES from p. 1

judges, the goal of the trustee system is to free the bankruptcy court from responsibilities of administration and to avoid the appearance of bias inherent in a judge's appointing a trustee or in hearing evidence (at meetings of creditors or other non-judicial settings) relevant to administration but inadmissible in litigation. In the pilot districts, panels of private trustees, creditors' committees, and examiners will all be selected by the U.S. trustees, thus enhancing the appearance of neutrality of all parties appearing before a bankruptcy judge. For the districts in the country which were not designated participants in the program, bankruptcy judges will retain some administrative responsibilities but will not have direct supervisory responsibility over private trustees. The new Act has alleviated the bankruptcy judges' administrative responsibilities somewhat through the creation of the office of the clerk of the bankruptcy court and by providing for the Director of the Administrative Office to establish and maintain

panels of private trustees for liquidation cases.

Training for the U.S. trustees began with a seminar held early in August generally reviewing the provisions of the new statute. More detailed training took place in a workshop held early in September attended by the trustees, a bankruptcy judge from each pilot district, and a representative of the Administrative Office. This workshop, originally proposed by New Jersey Bankruptcy Judge Richard Warren Hill and implemented by the Department of Justice (which is to supervise the trustee program), typifies the excellent cooperation received by the Department from the judicial branch in implementing the trustee program.

The trustee program is to terminate automatically in April 1984 unless Congress acts to expand its application throughout the nation. The Attorney General is to file annual reports on the project, and in January 1984 to submit to the Congress, the President and the Judicial Conference his analysis of the feasibility, cost and effectiveness of the trustee program. ■

See CHIEF JUSTICE p. 7



## REPORT ON ABA HOUSE OF DELEGATES ACTIONS

The American Bar Association House of Delegates took action on several resolutions of interest to the federal judiciary at the Association's annual meeting last month. Some actions taken by the House were:

- Approval of a resolution favoring amendments to the Administrative Procedure Act which would (1) require *de novo* review by federal courts of questions of law decided by administrative agencies and (2) eliminate the presumption of validity of an agency rule or regulation. Legislation authorizing this kind of expansion of judicial review and requiring that, when a rule or regulation is challenged, it will not be upheld unless its validity is demonstrated by a preponderance of the evidence, was recently and unexpectedly passed by a voice vote of the Senate. The bill will next be reviewed by the House Judiciary Committee.

- Disapproval of proposed endorsement of legislation establishing standards for implementing the death penalty in federal cases. The standards would have called for a separate hearing on the question of sentence following a conviction of a capital offense, and would have required the sentencing judge to consider certain mitigating and aggravating factors before imposing sentence.

- Disapproval of proposed endorsement of legislation aimed at overturning the

See ABA p. 7



Eighteen members of the *Consiglio Superiore della Magistratura*, the Italian Superior Council of Judges, visited the Federal Judicial Center this month on their tour of the United States to study the functioning and administration of justice in this country. The delegation, led by Solicitor General Dr. Mario Berri, was briefed on the criminal rule-making process in federal courts by Center Director, A. Leo Levin. A presentation on the work of the Center was made by FJC staff. The meeting was arranged at the request of Attorney General Benjamin Civiletti.

## SECURITY ROLE OF U.S. MARSHALS EXPANDED

Effective October 1, the United States Marshals Service will assume the responsibility for the security of federal courts that previously was borne by the Administrative Office of the United States Courts. Currently the A.O. reimburses the General Services Administration and the Postal Service (where courts are located in Post Offices) for the provision of security systems and Federal Protective Officers and other hired guards. Under the new program, which was established at the direction of Congress, the Marshals Service will undertake maintenance of security systems and will pro-

vide guards through its own personnel, who will serve in the newly created position of Judicial Security Officers.

When all changes are fully implemented, a three tiered security system will exist. During regular working hours security of courtroom areas will be the responsibility of the non-uniformed Judicial Security Officers; the A.O. will provide courthouse security during non-working hours by reimbursing GSA. Responsibility for prisoner movement and the guarding of individual courtrooms during trials will continue to be under

See SECURITY p. 7

## The Third Branch

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### Co-editors:

Alice L. O'Donnell, Director, Division of Inter-Judicial Affairs and Information Services, Federal Judicial Center

Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts.



## INTERVIEW WITH SENATOR EDWARD M. KENNEDY

from p. 1

glad that we were able to gain the kind of support that we did, both in the Committee and on the floor, as well as from interested groups around the country. We worked closely with the states, the governors, the counties and the mayors, and I think we have a strong legislative proposal.

Thirdly, we have continued to work on other important legislative initiatives: a joint package with the House of Representatives to revamp the criminal laws of this country currently found in Title 18 of the United States Code. We will be working with the House members on that legislation. This package, which will constitute a complete, comprehensive reform of the existing criminal code, will be announced shortly. [S. 1722, 1723 introduced September 7.] After more than 12 years of study by the Committee, I am very hopeful that this Congress will pass a comprehensive criminal code recodification.

Beyond that, we have made strong progress with the Administration, the Justice Department, and the Federal Bureau of Investigation in developing a charter for the FBI. The bill has been introduced in both Houses and hearings are scheduled soon. There is strong bipartisan support for the Charter.

**Federal judges faced with heavy caseloads are expressing great concern that the judgeships created by the Omnibus Judgeship Act are not being filled as quickly as they hoped they would be. Can you be optimistic for faster action in processing the nominations?**

We have taken very seriously our responsibility to insure the meritorious selection of federal judges. Working with the Justice Department, the Executive, and state bar associations, as well as with consumer groups, legal defenders and others who

are impacted by our judicial system, we have established a procedure to assure the selection of the very best for service on the federal judiciary. Recognizing the importance of the judiciary as an independent branch of government, it should be reflective of our society through the selection of men and women who possess the highest degree of judicial competence, personal integrity and judicial temperament and sensitivity. I think we have made impressive progress to date and I am very hopeful that this progress can continue as the year moves on. That certainly has the highest order of priority.

Breaking down the numbers of nominations that have been processed at this time, I believe that 48 have been completed so far. We have approximately 51 nominations which have been submitted and we are prepared to deal with them promptly. [Figures as of August 1979.]

We have taken seriously our own responsibility to review these nominations and we have developed for the first time our own questionnaire. We hope to gain information ourselves and through our own committee staff to conduct a very thorough review of the information concerning each nominee. I believe this to be an extremely important responsibility. As the one who actually offered the amendment increasing the total number of new federal judgeships, I am mindful of how important it is to fill these vacancies. I am also mindful that there will be no more important action taken in this Congress than insuring that these new vacancies be filled in a thoughtful and comprehensive way.

So I am confident that we are off to a good start. The legislative process moves slowly, but I would hope that the Judiciary

Committee would be judged, as Congress should be judged, on the results of our entire congressional session. I am satisfied that we are off to a constructive start.

**Attorney General Bell said long ago that he would have all of the new judgeships filled by April 15th. This appeared unrealistic at the time in view of all the investigative and other procedures which must be completed, but can you make some predictions as to just when these judgeships can be filled? In short, are there bottlenecks which are causing unnecessary delays?**

Not in the Committee. In Massachusetts, for example, knowing that vacancies were going to be created, we established a Merit Selection Committee. We were probably the second or third state to establish such a Committee. We submitted all four names to the Justice Department within several days after Judge Bell was sworn in. We were able to follow general Committee procedures by treating the nominees as a group so that local bar associations and the Judiciary Committee could observe the four nominees together. There are some instances where Senators have not established their commissions or have not submitted names to the Justice Department, so there is little that we can do here but wait.

We will act expeditiously on those names received from the Justice Department. We will also act in a comprehensive way in terms of fulfilling our responsibilities to the Senate in reviewing those recommendations. I would certainly hope that in other states the members of the bar and other interested groups would assure that their own Representatives or Senators expedite the process.



## JUDICIAL NOMINATIONS SENT TO SENATE

In recent action, the Senate Judiciary Committee approved 30 of President Carter's nominations for federal judgeships. Approved were 10 circuit and 20 district court positions. These nominations, some of which had been pending for a month, will now be sent to the full Senate for confirmation. Reports of Senate action will appear in the *The Third Branch*.

**Does your Committee hold up on confirmation hearings until you have at least half a dozen or so before setting dates for confirmation hearings?**

What we have attempted to do is to group them by district, region, or circuit. We had, for example, in Massachusetts, four judges heard together. We treated them in a block.

**Earlier this year, and shortly after you became Chairman of the Judiciary Committee, you said you would urge that the longstanding "blue slip" procedure no longer be used to table or defeat a nomination for a federal judgeship for lack of approval by a Senator from the nominee's state. Has the problem come up during this session?**

I feel very strongly that the Chairman of the Judiciary Committee should not be the final depository for effectively eliminating from consideration a distinguished member of the bar who has been recommended by the President of the United States. The traditional "blue slip" process -- the historical basis of which is extremely vague -- is antiquated and, I think, undesirable. If a member of the Senate has good cause for

believing that the President's nominee is not equipped for whatever reason to serve on the federal judiciary, then a decision not to hold hearings should be made by the full Judiciary Committee and should not rest solely on a decision of the Chairman or any one member. That is my position and the procedure which I will follow.

**It has not come up, this session?**

No, it hasn't come up this session. In fairness to the nominee's reputation and professional standing, in terms of the nominee's family, and in terms of the judicial selection process, the procedure which I have outlined is more desirable and fairer. The entire Judiciary Committee should make the decision.

**Senator, you have spoken out more than once on the need for "access to the courts" and you have said that this is a basic right all Americans must have; that they must know they will always have recourse to the courts. With enormous amounts of money being spent on legal services and public defender offices, do you feel some American citizens are in fact cut off from the judicial process?**

Well, whether it is true explicitly or implicitly, the delay that takes place -- the cost of litigation in the federal courts -- has in many instances discouraged middle and low income citizens from pursuing cases they otherwise could pursue. The cost of litigation is increasing at a dramatic rate and the individual American's perception of swift and equal justice is clouded by delay and cost. Our citizens believe in the concept of a judicial system which is fair, equitable and prompt. I find that the perception -- and the reality -- is something quite different.

I don't believe that there is any

quick solution to this problem. It is an issue that is going to be with us as we move into the 1980s. There have been a number of recommendations made to deal with the problem. The most obvious has been the creation of new judgeships which can help speed up the process. We have already passed this year the nonjudicial resolution of disputes bill to help states experiment with the resolution of matters of importance to the citizen but better resolved elsewhere. And then there is the magistrates and arbitration legislation. Finally, we recently reported out S. 1477, a comprehensive bill making major changes in the governance, administration and jurisdiction of our federal courts. We must insure both accessibility and prompt decision-making by our judicial system and do it in a way which guarantees first class justice. I think there is a concern by some that extra-judicial proceedings like arbitration create second class justice; that would obviously be unwise. Any alteration or changes in our system would have to be watched very closely.

**The Nunn/DeConcini bill which has been reintroduced during this Congress to set up procedures to discipline, suspend and/or censure federal judges, has been the subject of considerable discussion lately. In sponsoring alternative legislation, what factors most influenced you?**

Well, essentially what we are interested in is establishing a procedure in our judicial system to deal with the problem of improper behavior. The Constitution wisely provides for a process of impeachment. Senator Nunn's original proposal, I believe, raised serious constitutional questions and posed an unnecessary threat to the independence of the judiciary. I

See INTERVIEW p. 6



## INTERVIEW from p. 5

prefer the process endorsed by the Judicial Conference of the United States, an administrative procedure which would not provide for removal. It would provide for disciplinary procedures effectuated by the circuit councils themselves. I would add an appeal to the Judicial Conference and would allow a recommendation for impeachment to be made by the Judicial Conference itself. This provides a mechanism to deal with what are very unique and extraordinary circumstances; my approach establishes a mechanism which would be best suited to deal with these very special circumstances; and it seems to me to be much the wiser way to proceed -- if we must proceed at all.

Several groups have held meetings to discuss all these legislative proposals for discipline, censure and removal of federal judges. In the academic community some acknowledged scholars of constitutional law have differed on whether these proposals are constitutional or not. Do you think your bill will stand the constitutionality test?

Yes. Mine is a very different approach; you don't get into the constitutional question of removal. It is much more limited and achieves the desired end of providing a procedure which has the support of the Conference itself. Judicial discipline is quite unique and extraordinary; I am not convinced that formal statutory procedures are necessary. But, I don't think this minimizes the importance of addressing the issue.

Congressman Drinan and others have expressed the hope and belief that a new criminal code will come out of this Congress; further, that it will not end up in piecemeal legislation, but will be a comprehensive code including

**much of what has been thought to be highly controversial. Do you feel confident legislation will be passed during this Congress?**

I am very hopeful that we can get the Senate and House together. I think it's necessary. Of course, I think Congressmen Drinan and Kindness have done yeoman work. I think they deserve enormous credit as do the other House members.

The proposed code would include not only a recodification but also new sentencing proposals. There are still a few controversial sections. In such areas of controversy we ought to retain existing law. In other areas, we can make progress in consolidating sections and eliminating antiquated sections -- the whole range of different definitions of culpability, for example. We must find common ground and I think we can.

In a recent address to the National Governors' Conference you expressed concern about the bail system in this country, and you made it clear that you believe preventive detention laws are not only ineffective but unconstitutional. Statistics show a high percentage of individuals out on bail do commit still another crime and therefore pose a threat to the community. What do you propose as an alternative plan?

First of all, I think preventive detention is constitutionally flawed. Secondly, I think preventive detention is impractical and ineffective. In the District of Columbia, for example, it is rarely invoked. So even when it is on the statute books, for all practical purposes, it is not effective. A recent INSLAW study [Institute for Law and Social Research] done here in the District of Columbia confirmed the inefficiencies, inequities and impracticalities of preventive detention.

On the other hand, the judi-

ciary -- especially our local judiciary -- must be able to consider not only the issue of flight, but also the issue of danger to the community in establishing conditions of bail. Those limitations basically relate to the performance of the individual while on bail, whether he commits other crimes, interferes with certain witnesses, remains in certain areas, or checks in with the Marshal periodically. There may be, in particularly dangerous cases, reasons for imposing even stricter requirements. If the defendant were to violate these conditions, he should be subject to summary contempt procedures and his bail should be revoked. I also favor consecutive sentencing for the bailed offender who commits another crime. I'm hopeful that we can hear from members of the judiciary on this subject and from other interested groups, and that it will be part of the criminal code recodification

## CALENDAR from p. 8

- Sept. 26-28 Advanced Seminar for U.S. Magistrates; Cherry Hill, NJ
- Oct. 3-5 Sentencing Institute (CA-5); Dallas, TX
- Oct. 15-16 Workshop for District Judges (CA-7); Chicago, IL
- Oct. 16-19 Effective Productivity for Court Personnel; New York, NY
- Oct. 17-19 Conference of Metropolitan Chief Judges; Williamsburg, VA
- Oct 18-19 Judicial Conference Advisory Committee on Civil Rules; Washington, DC
- Oct. 22-23 Judicial Conference Committee on Rules of Practice and Procedure; Washington, DC
- Oct 23-26 Effective Productivity for Court Personnel; Washington, DC
- Nov. 6-9 Effective Productivity for Court Personnel; Houston, TX (date tentative)
- Nov. 11-17 Seminar for Newly Appointed District Judges; Washington, DC



ABA from p. 3

*Zurcher v. Stanford Daily* decision. The resolution, applicable to federal jurisdictions only, proposed protection of all innocent third parties, not just the media, from the issuance of search warrants.

- Approval of the revised draft of Standards Relating to Sentencing Alternatives and Procedures. These standards constitute a consolidation and an updating of two previously published Association standards relating to probation and sentencing alternatives. They are designed to conform the standards with decisions of the U.S. Supreme Court, changes in policy and recent developments in the law.

- Approval as expressions of additional ABA policy on the proposed new Federal Criminal Code, that sentencing judges be required to consider alternatives to imprisonment and that a section establishing penalties for consumer fraud be deleted because it is repetitious of the section relating to the execution of fraudulent schemes. The Association does support the imposition of criminal penalties for consumer fraud but thought that this section of the proposed code was unnecessary to effectuate that aim.

- Approval, in related developments on the proposed criminal code, of circumstances which would justify the application of federal criminal sanctions to conduct occurring outside the borders of the United States. Additionally, a resolution opposing appellate review of sentences in cases where such review is requested by the Government was sent to the Standing Committee on Association Standards for Criminal Justice for consultation with other ABA committees. The Standing Committee is to report to the Association at the February 1980 mid-year meeting.

- Approval of an endorse-

ment of legislation authorizing the transfer of improperly filed cases to the appropriate court of the United States. This matter is part of the Federal Courts Improvements Bill of 1979.

- Approval of an endorsement in principle of legislation, such as S.237, calling for merit selection of U.S. Magistrates. ¶

#### STAFF PAPER ON JUDICIAL DISCIPLINE AVAILABLE

*Judicial Discipline and Removal in the United States* is a new FJC staff paper available from the Information Services Office. The paper (the manuscript of an article prepared by Russell Wheeler and A. Leo Levin for publication in an international symposium on comparative judicial administration) reviews the background of the several state and federal mechanisms for dealing with charges of judicial unfitness and analyzes their performance in light of such criteria as effectiveness and fairness to the accused judge, giving special attention to the current debate over a new disciplinary mechanism for the federal judiciary.

SECURITY from p. 3

the U.S. Marshal. Federal Protective Officers or other guards provided by GSA will continue to secure the perimeter and other public areas of buildings housing federal courts pursuant to GSA's obligations as lessor of government buildings.

One aim of the program is to eliminate the A.O.'s "middle-man" function and reduce the overall cost of providing security. It is also hoped that the Judicial Security Officers, under the direct control and training of the Marshals Service, and working exclusively for the courts, will provide better and more consistent service.

For the immediate future,

however, court personnel will perceive no change in security procedures. The Marshals Service has not yet had its budget ceiling raised by the Office of Management and Budget so that the recruitment and training of the approximately 400 Judicial Security Officers may begin. Accordingly, the Marshals Service will initially meet its new responsibilities by providing security through contracts with GSA on the same basis as is presently employed by the A.O. The deployment of the Judicial Security Officers is estimated to be completed in one to two years, and it is hoped that the new personnel will be gradually phased into the court system as they become available.

The A.O. has transferred to the Marshals Service approximately \$7 million of the \$8.2 million budgeted for security for the judicial branch. The Marshals Service will use these funds to reimburse GSA over the next year, and, in the future, a similar amount will be allocated for the payment of the salaries of the Judicial Security Officers and for the costs of maintaining and purchasing security equipment. The A.O. will use the retained \$1.2 million to continue to reimburse GSA for court security during non-business hours and to provide security for judicial buildings not containing courts, such as the Federal Judicial Center. ¶

CHIEF JUSTICE from p.2

reform, The Chief Justice also made reference to our nation's successful 200 year experience in resolving admiralty and equity cases, often involving rights of great magnitude, without juries.

The Chief Justice concluded with a call to the federal and state courts to join forces "to explore alternatives to a system that we may have outgrown." ¶



# PERSONNEL

## NOMINATIONS

Samuel D. Johnson, Jr., U.S. Circuit Judge (CA-5), August 10  
 Edward B. Davis, U.S. District Judge, S.D. FL, August 10  
 Thomas A. Clark, U.S. Circuit Judge (CA-5), August 28  
 Nathaniel R. Jones, U.S. Circuit Judge (CA-6), August 28  
 Arthur L. Alarcon, U.S. Circuit Judge (CA-9), August 28  
 Harry Pregerson, U.S. Circuit Judge (CA-9), August 28  
 Stephanie K. Seymour, U.S. Circuit Judge, (CA-10), August 28  
 Alcee L. Hastings, U.S. District Judge, S.D. FL, August 28  
 Scott E. Reed, U.S. District Judge, E.D. KY, August 28

## APPOINTMENTS

Joseph W. Hatchett, U.S. Circuit Judge (CA-5), July 18  
 Thomas M. Reavley, U.S. Circuit Judge (CA-5), July 19  
 Albert J. Henderson, Jr., U.S. Circuit Judge (CA-5), July 27  
 Francis D. Murnaghan, Jr., U.S. Circuit Judge (CA-4), July 27  
 Patricia M. Wald, U.S. Circuit Judge (CA-DC), July 31  
 Reynaldo G. Garza, U.S. Circuit Judge (CA-5), Aug. 1  
 Lawrence K. Karlton, U.S. District Judge, E.D. CA, Aug. 1  
 Richard P. Conaboy, U.S. District Judge, M.D. PA, Aug. 6

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## ELEVATIONS

Newell Edenfield, Chief Judge, N.D. GA, July 27  
 H. Kenneth Wangelin, Chief Judge, E.D. MO, August 31

## DEATH

Alexander A. Lawrence, U.S. Senior District Judge, S.D. GA, August 20

# DOJFC calendar

Sept. 17-19 Advanced Employment Placement Seminar for Probation Officers; Covington, KY  
 Sept. 17-19 Advanced Evidence Seminar for Federal Defenders; Chicago, IL  
 Sept. 17-20 Workshop for Clerks of Bankruptcy Courts; Reno, NV  
 Sept. 17-20 COURTRAN II STARS and INDEX Training; Washington, DC  
 Sept. 18-19 Appellate Deputies Seminar (CA-10); Denver, CO  
 Sept. 18-21 Effective Productivity for Court Personnel; Phoenix, AZ  
 Sept. 19-20 Judicial Conference of the United States; Washington, DC  
 Sept. 21 Meeting of Circuit Chief Judges; Washington, DC  
 Sept. 21 Meeting of District Judge Delegates to Judicial Conference; Washington, DC  
 Sept. 24-28 COURTRAN II STARS and INDEX Training; Washington, DC  
 Sept. 24-28 Advanced Seminar for U.S. Probation Officers; Chattanooga, TN  
 Sept. 25-27 In-Court Management Workshop; Brainerd, MN  
 Sept. 25-28 Effective Productivity for Court Personnel; Cleveland, OH

See CALENDAR p. 6

THE THIRD BRANCH

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OCTOBER, 1979

## NEW LEGISLATION EXPANDS MAGISTRATES' JURISDICTION

The Federal Magistrate Act of 1979, expanding the civil and criminal jurisdiction of United States magistrates, was signed into law by the President on October 10 as P.L. 96-82. The final version of the legislation incorporates changes proposed by a congressional conference committee following amendment by the House of the original Senate bill, S. 237. All the provisions of the Act, with the exception of those calling for the promulgation of new standards for the selection of magistrates, go into effect immediately.

The new Act makes three important changes in the current civil jurisdiction of magistrates.

First, it codifies existing practice by permitting all full-time

See MAGISTRATES p. 6

## DEVITT COMMITTEE RECOMMENDATIONS ACCEPTED BY JUDICIAL CONFERENCE

At its meeting last month, the Judicial Conference of the United States adopted by formal resolution all recommendations contained in the final report of the Committee to Consider Standards for Admission to Practice in the Federal Courts. The report was the culmination of three years of effort during which the committee conferred with members of the bench and bar, made an exhaustive investigation, and held public hearings nationally.

The committee, chaired by Chief Judge Edward J. Devitt of Minnesota, consisted of federal judges, private practitioners, law school deans and four law student consultants.

The recommendations in the committee's report lie in two major areas: the first is aimed at

curing deficiencies the task force found in the type and degree of trial practice training offered in law schools; the second makes proposals for action to be taken directly by the district courts.

The Judicial Conference will implement the committee's recommendations by undertaking two actions.

- First, the Conference will recommend to the American Bar Association that it consider amending its law school accreditation standards to require that all schools offer quality courses in trial advocacy with student participation in actual or simulated trials under the supervision of instructors having trial experience.

- Second, a new committee will be created to oversee an experimental program which will be conducted on a pilot basis in courts that wish to participate. The program calls for:

- (1) An examination on federal practice subjects as a prerequisite to admission to the bar of a federal district court. This examination would not be required of present members.

- (2) Four supervised trial experiences, two of which involve participation in actual trials, prior to a lawyer's unsupervised conduct of a trial in federal court. Present members must meet this

See DEVITT p. 2

## NEW FJC BOARD MEMBERS ELECTED



Lloyd D. George



Donald S. Voorhees

See NEW BOARD p. 2



DEVITT from p. 1

requirement prior to conducting an unsupervised trial, but previous trial experiences used to meet the requirement need not have been supervised.

(3) Establishment of nondisciplinary peer review committees to advise and counsel present members of the bar.

Additionally called for were support for student practice in federal district courts and encouragement of continuing legal education in trial advocacy and federal practice subjects.

The examination and experience requirements were not favored by some members of the committee, including the chairman.

The committee said in introductory comments that their survey of the entire situation "established that there is a significant problem with the quality of trial advocacy in the federal courts." For example, the committee pointed out that data compiled from a survey conducted by the Federal Judicial Center showed that 41% of the district court judges replying felt that there was a "serious problem" of inadequate trial advocacy, and 25% of actual attorney performances were rated by these judges as less than "good." On the other hand, the committee found that law schools were "doing a good job in preparing lawyers for appellate work," and its report therefore did not call for remedies directed specifically at appellate practice.

To address the problems in trial advocacy, the committee advocated increased emphasis on learning the art of advocacy in law schools. Estimating that only about one out of three law students who desire to take a trial advocacy course are able to do so, the committee proposed a change in accreditation standards and called for the bench and bar to assist law schools in attaining the goal of providing such courses to all

students who want them.

As recommended by a majority of the committee, the examination, experience and peer review proposals will be implemented on an experimental, pilot basis, and this experiment will be overseen by the new and as yet unappointed committee of the Conference. The Conference resolution called for flexibility in conducting the experimental program, and advised that combinations and permutations of the different remedies be adopted in different localities. It also emphasized that sufficient time, money and expertise must be made available for studying the program. ■■

NEW BOARD from p. 1

United States District Judge Donald S. Voorhees (W.D. WA) and Bankruptcy Judge Lloyd D. George (D. NV) were elected to the Board of the Federal Judicial Center by the Judicial Conference of the United States last month. The eight-member Board consists of The Chief Justice of the United States, who is permanent Chairman, two circuit court judges, three district court judges, one bankruptcy court judge, and the Director of the Administrative Office of the United States Courts.

Judge Voorhees, who is a graduate of the University of Kansas (A.B. 1938) and Harvard Law School (J.D. 1946), was appointed district court judge on June 20, 1974. He fills the district court position on the Board which became vacant when Judge Otto R. Skopil, Jr. of Oregon took a seat on the Ninth Circuit on October 20.

Judge George, who was appointed bankruptcy judge on March 4, 1974, was elected to fill the new position on the Board created as of October 1, 1979 by the Bankruptcy Reform Act. He is a graduate of Brigham Young (B.S. 1955) and the University of California (J.D. 1961). ■■

## LAW CLERK, SECRETARIAL POSITIONS OUTLINED BY BANKRUPTCY DIVISION

Funds became available October 1 for law clerks for full-time bankruptcy judges. Public Law 95-598, the Bankruptcy Reform Act of 1978, amended Chapter 50 of Title 28 of the United States Code to provide for the appointment of law clerks and secretaries by bankruptcy judges. Procedures for selection and appointment for the two positions were set forth in a memorandum of August 6, 1979 from the Bankruptcy Division of the Administrative Office to all bankruptcy judges.

Law clerks may be authorized on a full- or part-time basis, and bankruptcy judges have been asked to assure themselves that full-time positions are justified. Part-time clerks will not be allowed to practice law. It is possible to establish a position of part-time law clerk and part-time courtroom deputy; or a courtroom deputy with law clerk responsibilities. In the latter instance the position would be under the clerk of court. To obtain authorization for any law clerk position, full-time bankruptcy judges should write to the Bankruptcy Division indicating whether full-time service is justified.

Within the limits of the congressional authorization, attempts will be made to satisfy requests from part-time bankruptcy judges for law clerks.

A secretary may be appointed for each bankruptcy judge, but the position must come from the current complement of clerk's office positions as no new positions were authorized by Congress for secretarial service. If a current bankruptcy office employee is appointed as secretary, the action will be handled as a reclassification of the current position. Appointment from outside the bankruptcy office must be made to a vacant position in

See BANKRUPTCY p. 3





Chairman L.N. Smirnov of the Supreme Court of the Soviet Union visited the Federal Judicial Center on a recent tour of the United States that reciprocated Chief Justice Burger's earlier visit to the Soviet Union. Center Director A. Leo Levin gave a presentation which included a videotape demonstration of the Courtran computer system, and presented Chairman Smirnov with a copy of a book distributed by the Supreme Court Historical Society entitled "Magna Carta and the Tradition of Liberty."

## BANKRUPTCY from p.2

the clerk's office, which would be reclassified as a secretarial position.

Qualification requirements for the law clerk and secretarial positions are the same as those for law clerks and secretaries to U.S. district judges, and may be found in the Judiciary Salary Plan (1976 Edition).

Questions concerning authority to appoint law clerks and secretaries should be addressed to Kent Presson of the Bankruptcy Division, FTS 633-6232. Questions concerning qualifications of law clerks and secretaries should be directed to the Personnel Division, FTS 633-6063.

## The Third Branch

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Joseph R. Spaniol, Jr., Deputy Director, Administrative Office, U.S. Courts

## CIRCUIT ROUNDUP: THE 1979 CIRCUIT JUDICIAL CONFERENCES

By statute, the chief judge of each of the eleven circuits is required to annually summon all the active circuit and district judges within the circuit to a conference "for the purpose of considering the business of the courts and advising means of improving the administration of justice within such circuit." 28 U.S.C. § 333.

September brought to a close this year's conferences, some highlights of which are reported below.

*First.* Chief Judge Frank M. Coffin reports that this year's meeting, though "mainly inhouse," featured two speakers: one was Professor Stephen Breyer of Harvard who is now Chief Counsel for the Senate Judiciary Committee. Professor Breyer stressed how the Committee can act as a catalytic agent and how it has stimulated interest groups to come forward with views on legislation. The other speaker

was Anthony Lewis, New York Times columnist and author of several books related to the legal profession, who addressed the judges on issues involved in recent Supreme Court cases.

Two subjects which received special attention: the new Bankruptcy Reform Act (discussed by Berkeley Wright) and the Devitt Committee report (discussed by Judge Robert E. Keeton, a member of the committee).

*Second.* This year's theme was on the courts and the free press. With the media well represented, Irving R. Kaufman, Chief Judge of the Circuit, referred to free expression as the "indispensable liberty without which no other can be secure." The judge noted that "the independent press and the independent judiciary stand in a symbiotic relationship," and he went on to say that protection of the free press is really a function

See ROUNDUP p. 7



## JUDICIAL CONFERENCE EULOGIZES JUDGES BIGGS AND JONES

The Judicial Conference last month adopted resolutions eulogizing two revered members of the Conference who died recently. The text of these resolutions follows.

\* \* \* \* \*

### RESOLUTION

The Judicial Conference notes with sorrow the death of Judge John Biggs, Jr. on April 15, 1979. Judge Biggs joined the Conference in April 1939 when he became Senior Circuit Judge of the Third Circuit, later denominated Chief Judge, and served on the Conference for more than 26 years until October 1965. Throughout this period Judge Biggs was a stalwart leader in the work of the Conference, serving as the chairman or member of numerous Conference committees. In 1955 he organized the Committee on Court Administration and served as its chairman for 14 years. He was chairman of the Committee on Supporting Personnel from 1940 to 1969, chairman of the Subcommittee on Judicial Salaries, Annuities and Tenure of the Committee on Court Administration from 1969 to 1970, and a member of the Committee on Judicial Statistics from 1957 to 1969. During his service on the Judicial Conference he also served on numerous ad hoc Conference committees.

His dedication to the work of the Conference brought him to Washington frequently to meet with representatives of the Judiciary Committees of the Congress and to testify before Congress on behalf of the Conference on legislative matters affecting the Judiciary, including the annual Judiciary budget. His voice before the Congress and in the Conference was strong and influential. Few judges in the history of the Federal Judiciary have

contributed as much to the development of the federal judiciary as did Judge John Biggs, Jr.

The members of the Conference mourn the passing of this distinguished and dedicated jurist and colleague.

\* \* \* \* \*

### RESOLUTION

The Judicial Conference of the United States takes note with deep sorrow of the death of Judge William Blakely Jones on July 31, 1979, in Washington, D.C.

Born in Cedar Rapids, Iowa on March 20, 1907, Judge Jones spent his boyhood in Denison and Sioux City, Iowa; then attended the University of Notre Dame for both his undergraduate and legal training. Judge Jones starred as a football player under the fabled Knute Rockne, served as coach of the freshman football team under Rockne while attending Notre Dame Law School, and was a highly successful football coach at Carroll College in Helena, Montana.


After a successful period in private practice in Montana, Judge Jones became a Washington lawyer in the Lands Division of the Justice Department, served in the Office of Price Administration, and was Secretary of the Joint British American Patent Interchange Committee during World War II.

Entering private practice in Washington in 1946, he quickly established a brilliant reputation as a lawyer of exceptional ability.

Judge Jones gave up an outstanding law practice to begin his service as a United States District Judge on May 14, 1962, and quickly became recognized as one of the nation's most distinguished jurists because of his ability, zeal, and hard work. Judge Jones served as Chief Judge of the United States District Court for the District of Columbia from July 14, 1975, until March 20, 1977, when he accepted senior

status.

Despite the great burdens which Judge Jones carried as a judge and chief judge in the District of Columbia, he was active and vigorous in a substantial number of legal associations and organizations. Judge Jones served as Chairman of the Board of the National Institute of Trial Advocacy and as Chairman of the Judicial Conference Advisory Committee on Judicial Activities. He also served as Chairman of the Judicial Administration Division of the American Bar Association, and was a Judicial Fellow in the American College of Trial Lawyers and a member of the American Bar Foundation.

Judge Jones' life was one of challenge, hard work, and the successful pursuit of excellence in all that he did. In every role he won the respect and affection of everyone with whom he worked and was revered as a leader, counselor, and friend. The Judicial Conference of the United States adopts this resolution in memory and appreciation of his life and service. The sympathy of all Conference members is extended to Mrs. Alice Jones and his daughter Barbara. 

## CENTER ANNOUNCES PUBLICATION OF REPORT ON PROSECUTORIAL DISCRETION AND SENTENCING REFORM

The Federal Judicial Center has published a report analyzing prosecutorial power over criminal sentences under S. 1437, the Criminal Code Reform Act considered last year by the 95th Congress. Although this legislation was passed by the Senate, it died in House committee. New criminal code reform legislation—including sentencing restructuring—is presently before the 96th

See PUBLICATION p. 7



• District courts experienced a continued decline in the number of criminal filings, down 9.2 percent from 35,983 last year to 32,688. According to the report, the decline may be attributed in part to the diversion of prosecution of bank robberies and juvenile cases to state authorities. Implementation of the

Charts from *The United States Courts, A Pictorial Summary*.

A second case was filed October 19, 1979, *Will v. United States*, No. 79C 4368, on behalf of the class, for the pay increases for October 1, 1978 and October 1, 1979. ¶¶



MAGISTRATES from p. 1

and some part-time magistrates to hear and confer judgment in any jury or non-jury civil case as long as all the parties to the litigation consent. A magistrate hearing such a case will, however, have to be designated by the district court to exercise such jurisdiction. Part-time magistrates may try civil cases with the parties consent if they have been a member of the bar for at least five years and if the chief judge of the district court certifies that a full-time magistrate is not reasonably available. The statute does provide the district court with a limited power to vacate the reference of a civil case to a magistrate.

Second, the Act for the first time will allow an appeal from a judgment of a magistrate in a civil case to be taken directly to the court of appeals. The conference report noted that this procedure was controversial, but concluded that parties consenting to trial by a magistrate were entitled to the same route of appeal as litigants having their cases heard by a district court judge. However, parties will be permitted to follow existing practice by agreeing at the time of reference to the magistrate to take any appeals to the district court.

Third, to insure the voluntariness of the parties' consent to the referral of a case to a magistrate, the Act provides that the filing of a referral be done through the clerk's office without the involvement of a district judge or magistrate at that stage. Additionally, the Act specifically forbids a judge or magistrate from attempting to persuade or induce any party to consent to a referral, and it requires that the rules of court regarding such referral include procedures to protect the voluntariness of the parties' consent.

The Act also sets forth detailed requirements for the merit selection of magistrates. It requires that a nominee to the

position be a member of the bar for at least five years, and that the selection be made pursuant to standards and procedures to be promulgated by the Judicial Conference of the United States at its next meeting (March 1980). The Act also requires that public notice of vacancies in magistrate positions be given and that district courts establish merit selection panels to assist in the selection process. In recognition of the underrepresentation of women, blacks, Hispanics and other minorities in the federal judiciary, the congressional conference directed the merit selection panels to give due consideration to all qualified candidates, especially women and minorities.

With regard to magistrates who are currently sitting, the Act provides that they may exercise the civil trial jurisdiction authorized in the legislation only after having been reappointed under the standards and procedures of the Judicial Conference or after having been certified as qualified to exercise such jurisdiction by the judicial council of the circuit in which the magistrate serves.

The Act also makes several changes in the magistrates' jurisdiction in criminal cases.

Magistrates will, upon designation by the district court, be able to hear and to impose sentences in all jury or non-jury misdemeanor cases, although defendants must explicitly waive their right to trial by a district judge. Presently, the magistrates may not conduct jury trials or hear misdemeanors with a potential fine greater than \$1,000.

In cases involving a youth offender (under age 22 at time of conviction) tried by a magistrate, the Act limits the magistrate's sentencing powers so that no sentence greater than one year for a misdemeanor or six months for a petty offense may be imposed. The Youth Corrections Act's "core concept" of re-

habilitation rather than retribution is retained by requiring conditional release and unconditional discharge of such offenders.

In a compromise regarding the magistrates' jurisdiction over cases involving juveniles (under 18 at time crime was committed) accused of misdemeanors or petty offenses, the conference revision grants magistrates authority to try juveniles only with their consent and only in petty cases. In such cases, a magistrate may not impose a term of imprisonment.

Finally, the Senate bill had proposed an amendment of the Federal Rules of Criminal Procedure to allow a magistrate to accept guilty pleas in felony cases with the consent of the defendant. This provision was rejected by the congressional conference, and a letter was sent to The Chief Justice requesting study of this issue by the proper committees of the Judicial Conference. ■

#### 1980 - 1981 JUDICIAL FELLOWS PROGRAM

Each year the Judicial Fellows Program enables a small number of young professionals to observe and contribute to projects involved in improving judicial administration. The one-year fellowships begin in September and include a stipend based on comparable government salaries.

Application information and literature on the 1980-1981 program is available on request from Mark W. Cannon, Executive Director of the Judicial Fellows Commission, Supreme Court of the United States, Washington, D.C. 20543. The deadline for making application is November 5.



### ROUNDUP from p. 3

of all three branches of our Government.

The Circuit Justice for the Second, Thurgood Marshall, attended the conference and discussed Second Circuit cases reviewed by the Supreme Court during the past Term of Court.

*Third.* Chief Judge Collins J. Seitz continued his practice of giving a "State of the Circuit" address. Of considerable inter-

est was a panel discussion on trial issues facing the district courts, in which six district judges participated. Covered during this half-day session were matters related to civil rights litigation, current problems in determining awards of attorney fees and costs, and representation of multiple defendants in criminal cases by a single lawyer.

*Fourth.* The Chief Justice, Circuit Justice for the Fourth, was in attendance and this year stressed in his remarks the importance of assuring that there be a high quality of professional performance by members of the federal bar. Repeated again was The Chief Justice's admonition that "we owe to our profession and to the public a duty to look at ourselves objectively, take note of our strong points and our weak points, and then by constructive efforts try to improve the service of our profession to the public."

*Fifth.* Chief Judge John R. Brown presented his annual report on the Fifth Circuit and announced at the beginning of his speech that it would probably be his last appearance at the judicial conference as the Chief Judge. Judge Brown will be succeeded as Chief Judge by Judge James P. Coleman of Mississippi, in December 1979.

Judge Brown's speech contained references to the congressional stipulation that "any court of appeals having more than 15 active judges may constitute itself into administrative units." The Judge reported that once the sixteenth judge has taken his position on the court, a circuit Judicial Council meeting will be held to consider all aspects of necessary changes, including recommendations of a four-judge committee which has been studying all possible alternative methods and devices.

The Chief Justice also addressed the circuit, and recommended new federal government programs for correctional

institutions. See *The Third Branch*, Vol. 11, No. 6, June, 1979.

*Sixth.* This Circuit also included a program on media and the law, with a discussion group led by representatives of the media as well as the judges and practicing lawyers. They also heard a report from the Devitt Committee and a discussion of the impact of decisions of the Supreme Court during the past Term of Court.

*Seventh.* Released at the time of this Circuit's conference were two significant publications. One was a report of the special committee appointed by Chief Judge Thomas E. Fairchild to evaluate the Seventh Circuit's judicial conferences. A major recommendation of the committee was that programs for the conference, other than the executive sessions of the judges, be planned by a committee of six, three judges and three lawyers. The second report released was one drafted by a special committee appointed to study the high cost of litigation. Also distributed at the meeting was the latest edition of the practitioners' handbook for the Circuit.

*Eighth.* Chief Judge Floyd R. Gibson delivered his annual "State of the Judiciary" speech and announced he would be taking senior status next March; also, that the Circuit Executive, Hans Lawton, would be leaving to enter private practice after five years of service to the Circuit, his initial commitment to the position. Though reporting heavy caseloads, Chief Judge Gibson expressed optimism for disposing of cases expeditiously since there would be an infusion of new judges into the Circuit.

*Ninth.* The judges of the conference heard Chief Judge James R. Browning's annual report; conferred with Chief Justice Burger on the business of the Circuit; and voted upon sixteen resolutions. The resolu-

See ROUNDUP p. 8

### PUBLICATION from p. 4

Congress as a House draft and as S. 1722 and S. 1723.

The report, by Professor Stephen J. Schulhofer of the University of Pennsylvania Law School, is the product of work done under contract with the FJC Research Division. It is entitled *Prosecutorial Discretion and Federal Sentencing Reform*.

A number of commentators had expressed concern that adoption of the sentencing provisions of S. 1437 would not reduce sentencing disparity, but would merely shift the locus of sentencing discretion from judges and parole authorities to prosecutors. Professor Schulhofer analyzes specific ways in which prosecutorial influence over sentences might be enhanced by the system of guidelines contemplated in the bill, and suggests ways in which such a system could be implemented to bring prosecutorial discretion under control. Amendments to S. 1437 are recommended.

The report has been published in two volumes. The first contains the body of the report with analysis and conclusions; the second is a technical supplement that explores some aspects of the problem in greater depth.

Copies of the report may be obtained from the Information Services Office of the Federal Judicial Center. Requesters should indicate which volumes of the report are desired. ■■




ROUNDUP from p. 7

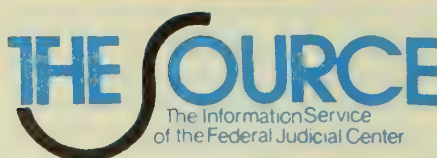
tions covered a broad spectrum of issues related to the processing of cases within the Circuit.

**Tenth.** Featured at this Circuit's meeting was a speech by then Associate Attorney General Michael J. Egan who addressed the conference on legal representation of the federal government. Mr. Justice White, Circuit Justice, reviewed recent Supreme Court decisions, with emphasis on those coming from the Tenth Circuit.

**District of Columbia.** This year members of the conference discussed an important issue receiving considerable attention recently: the matter of the options available in redistributing litigating authority between the Department of Justice and other departments and agencies in the Executive Branch.

Reported on and discussed was the first year's experience with the Circuit's court of appeals management plan.

The Chief Justice, Circuit Justice for the D.C. Circuit, spoke on his visit to Russia in 1977 and reported some comparative observations. 



Publications are primarily listed for the reader's information. **Only those titles listed at the beginning of the column and in boldface are available from the FJC Information Services Office.**

**Discovery Sanctions: A Judicial Perspective.** Charles B. Renfrew. 67 Calif. L. Rev. 264-282 (March 1979).


The Lower Federal Courts as Constitution-Makers: The Case of Prison Conditions. Daryl R.

Fair. 7 Am. J. Crim. L. 119-140 (July 1979).

1978 Annual Report. Institute for Court Management. ICM 1979.

Public Criticism of the Judiciary—Is it Caused by a Defaulting Executive or Legislature? Chesterfield Smith. 10 Column [Trial Court Admin.] 4 (July/Aug. 1979).

Trends in Administration of Justice in the Federal Courts. Max Rosenn. 39 Ohio St. L. J. 791-804 (1978).

The Crisis of Conscience; Federal Judges in Segregated Clubs. Steve Suitts. Atlanta, Southern Regional Council, 1979. 


#### A.O. REPORT from p. 5

ceedings and probation received in the 12-month period. In addition, this section includes an analysis of statistics obtained from petit and grand jury reports; reports of the caseloads of federal public and community defenders; information received

from clerks of court on three-judge hearings; the status of three year old civil cases and the status of criminal defendants; an inventory of passport applications; the number of petitions for naturalization and the number of aliens naturalized.

An appendix of tables presents statistics on the work for each of the circuit, district and bankruptcy courts, the federal probation system, grand and petit jurors, federal public defenders and U.S. magistrates.

A companion report, *The United States Courts, A Pictorial Summary*, presents a concise summarization of the statistics reported in the annual report in the form of graphs and charts.

Federal judges and staff may obtain a copy of the annual report or the pictorial summary without charge from the Statistical Analysis and Reports Division, Administrative Office, of the United States Courts. Others may purchase the reports from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock numbers for the publications are: *Annual Report*, 028-004-00028-1; *Pictorial Summary*, 028-004-00027-3. 

#### TWO CAREER A.O. OFFICIALS DEAD:

##### VICTOR H. EVJEN, VIVIAN CLEMENTS

Victor H. Evjen, former Assistant Chief of the Probation Division in the Administrative Office, died last month of a heart attack while in his doctor's office. He was 73.

Mr. Evjen was first a probation officer with the juvenile court in Chicago, and a short time later became a probation-parole officer with the U.S. District Court for the Northern District of Illinois. This service with the District Court and his work in the Administrative Office represent a 35-year career with the federal courts.

As managing editor and later

as editor of the publication *Federal Probation*, Mr. Evjen established a national reputation as one of the country's top criminologists.

Another former Administrative Office official, Vivian Clements, died last month of an aneurysm at the age of 80.

Mr. Clements joined the Administrative Office in 1940 after service with the Navy Department and the Department of Justice. At the time of his retirement he held the position of Chief Auditor for the Administrative Office.



PERSONNEL from p. 10

# **NOMINATIONS (Con't)**

Lucius D. Bunton, III, U.S. District Judge, W.D. TX, Oct. 11  
 Harry L. Hudspeth, U.S. District Judge, W.D. TX, Oct. 11

# **CONFIRMATIONS**

Robert J. Staker, U.S. District Judge, S.D. W VA, Sept 11  
 James M. Sprouse, U.S. Circuit Judge (CA-4), Sept 11  
 Matthew J. Perry, Jr., U.S. District Judge, D. SC, Sept 19  
 Bailey Brown, U.S. Circuit Judge (CA-6), Sept. 25  
 Cornelia G. Kennedy, U.S. Circuit Judge (CA-6), Sept 25  
 Edward C. Reed, Jr., U.S. District Judge, D. NV, Sept 25  
 Mary M. Schroeder, U.S. Circuit Judge (CA-9), Sept 25  
 Avern Cohn, U.S. District Judge, E.D. MI, Sept 25  
 Stewart A. Newblatt, U.S. District Judge, E.D. MI, Sept 25  
 William Hungate, U.S. District Judge, E.D. MO, Sept 25  
 Howard F. Sachs, U.S. District Judge, W.D. MO, Sept 25  
 Richard D. Cudahy, U.S. Circuit Judge (CA-7), Sept 25  
 John V. Parker, U.S. District Judge, M.D. LA, Sept 25  
 Scott O. Wright, U.S. District Judge, W.D. MO, Sept 25  
 Abner J. Mikva, U.S. Circuit Judge (CA-DC), Sept 25  
 Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), Sept 25  
 Richard M. Bilby, U.S. District Judge, D. AZ, Sept 25  
 Veronica D. Wicker, U.S. District Judge, E.D. LA, Sept 25  
 John M. Shaw, U.S. District Judge, W.D. LA, Sept 25  
 Falcon B. Hawkins, U.S. District Judge, D. SC, Sept 25  
 C. Weston Houck, U.S. District Judge, D. SC, Sept 25  
 Jim R. Carrigan, U.S. District Judge, D. CO, Sept 25  
 Zita L. Weinshienk, U.S. District Judge, D. CO, Sept 25  
 George Arceneaux, Jr., U.S. District Judge, E.D. LA, Sept 25

Otto R. Skopil, Jr., U.S. Circuit Judge (CA-9), Sept 25  
 Patrick E. Carr, U.S. District Judge, E.D. LA, Sept 25  
 Benjamin F. Gibson, U.S. District Judge, W.D. MI, Sept 25  
 Douglas W. Hillman, U.S. District Judge, W.D. MI, Sept 25  
 J. Jerome Farris, U.S. Circuit Judge (CA-9), Sept 26  
 Betty B. Fletcher, U.S. Circuit Judge (CA-9), Sept 26  
 Albert Tate, Jr., U.S. Circuit Judge (CA-5), Oct. 4  
 Samuel D. Johnson, Jr., U.S. Circuit Judge (CA-5), Oct 4  
 Nathaniel R. Jones, U.S. Circuit Judge (CA-6), Oct 4  
 Joseph C. Howard, Sr., U.S. District Judge, D. MD, Oct 4  
 Shirley B. Jones, U.S. District Judge, D. MD, Oct 4  
 Lynn C. Higby, U.S. District Judge, N.D. FL, Oct 4  
 James C. Paine, U.S. District Judge, S.D. FL, Oct 4  
 James W. Kehoe, U.S. District Judge, S.D. FL, Oct 4  
 Eugene P. Spellman, U.S. District Judge, S.D. FL, Oct 4  
 Gene E. Brooks, U.S. District Judge, S.D. IN, Oct 4  
 William L. Beatty, U.S. District Judge, S.D. IL, Oct 4  
 Hugh Gibson, Jr., U.S. District Judge, S.D. TX, Oct 4  
 George J. Mitchell, U.S. District Judge, D. ME, Oct 4  
 Jerry L. Buchmeyer, U.S. District Judge, N.D. TX, Oct 4  
 Edward B. Davis, U.S. District Judge, S.D. FL, Oct 4

# **APPOINTMENTS**

Warren W. Eginton, U.S. District Judge, D. CT, Aug 1  
 Robert L. Anderson, III, U.S. Circuit Judge (CA-5), Aug 6  
 Carolyn D. Randall, U.S. Circuit Judge (CA-5), Aug 8  
 Henry A. Politz, U.S. Circuit Judge (CA-5), Aug 10  
 Susan H. Black, U.S. District Judge, M.D. FL, Aug 17  
 Orinda D. Evans, U.S. District Judge, N.D. GA, Aug 17  
 Marvin H. Shoob, U.S. District Judge, N.D. GA, Aug 17

G. Ernest Tidwell, U.S. District Judge, N.D. GA, Aug 17  
 Robert L. Vining, Jr., U.S. District Judge, N.D. GA, Aug 17  
 Marvin E. Aspen, U.S. District Judge, N.D. IL, Sept 4  
 James B. Moran, U.S. District Judge, N.D. IL, Sept 10  
 William J. Castagna, U.S. District Judge, M.D. FL, Sept 14  
 James M. Sprouse, U.S. Circuit Judge (CA-4), Sept 22  
 Robert J. Staker, U.S. District Judge, S.D. W VA, Sept 22  
 Bailey Brown, U.S. Circuit Judge (CA-6), Sept 27  
 John V. Parker, U.S. District Judge, M.D. LA, Sept 27  
 Douglas M. Hillman, U.S. District Judge, W.D. MI, Sept 28  
 Falcon B. Hawkins, U.S. District Judge, D. SC, Sept 28  
 Stewart A. Newblatt, U.S. District Judge, E.D. MI, Sept 28  
 George Arceneaux, Jr., U.S. District Judge, E.D. LA, Sept 28  
 John M. Shaw, U.S. District Judge, W.D. LA, Sept 28  
 C. Weston Houck, U.S. District Judge, D. SC, Sept 29  
 Samuel D. Johnson, Jr., U.S. District Judge (CA-5), Oct 17  
 Otto R. Skopil, Jr., U.S. Circuit Judge, (CA-9), Oct 20

# **ELEVATIONS**

Charles A. Moye, Jr., Chief Judge, N.D. GA, July 27  
 Carl B. Rubin, Chief Judge, S.D. OH, Sept 23  
 Robert M. McRae, Jr., Chief Judge, W.D. TN, Sept 27

# **DEATHS**

F. Ryan Duffy, U.S. Senior Circuit Judge (CA-7), Aug 16  
 Charles Fahy, U.S. Senior Circuit Judge (CA-DC), Sept 17  
 Marshall A. Neill, U.S. District Judge, E.D. WA, Oct 6



# PERSONNEL

## NOMINATIONS

Warren J. Ferguson, U.S. Circuit Judge (CA-9), Sept 28  
 Dorothy W. Nelson, U.S. Circuit Judge (CA-9), Sept 28  
 Terry J. Hatter, Jr., U.S. District Judge, C.D. CA, Sept 28  
 Milton L. Schwartz, U.S. District Judge, E.D. CA, Sept 28  
 Robert H. Hall, U.S. District Judge, N.D. GA, Sept 28  
 Dale E. Saffels, U.S. District Judge, D. KS, Sept 28  
 Harold A. Ackerman, U.S. District Judge, D. NJ, Sept 28  
 Dickinson R. Debevoise, U.S. District Judge, D. NJ, Sept 28  
 H. Lee Sarokin, U.S. District Judge, D. NJ, Sept 28  
 Anne E. Thompson, U.S. District Judge, D. NJ, Sept 28  
 Neal P. McCurn, U.S. District Judge, N.D. NY, Sept 28  
 Frank H. Seay, U.S. District Judge, E.D. OK, Sept 28  
 Lee R. West, U.S. District Judge, W.D. OK, Sept 28  
 Thomas R. Brett, U.S. District Judge, N.D. OK, Sept 28  
 James O. Ellison, U.S. District Judge, N.D. OK, Sept 28  
 Andrew L. Jefferson, Jr., U.S. Circuit Judge (CA-5), Oct. 11  
 Cecil F. Poole, U.S. Circuit Judge (CA-9), Oct. 11  
 William O. Bertelsman, U.S. District Judge, E.D. KY, Oct. 11

Peter H. Beer, U.S. District Judge, E.D. LA, Oct. 11  
 L.T. Senter, Jr., U.S. District Judge, N.D. MS, Oct. 11  
 James T. Giles, U.S. District Judge, E.D. PA, Oct. 11  
 See PERSONNEL, p. 9

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# DOJFC calendar

Oct. 25 Hearings before Judicial Panel on Multidistrict Litigation, New York, NY  
 Nov. 6-9 Effective Productivity for Court Personnel; Los Angeles, CA  
 Nov. 9 Judicial Conference Subcommittee on Appellate Courts; Washington, DC  
**Nov. 11-17 Seminar for Newly Appointed District Judges; Washington, DC**  
 Nov. 19-20 Judicial Conference Subcommittee on Judicial Statistics; Marco Island, FL  
 Nov. 26-28 Workshop for District Judges (Ninth Circuit); Palm Springs, CA  
 Nov. 28-29 Judicial Conference Subcommittee on Bankruptcy Rules; Orlando, FL  
 Dec. 4-7 Effective Productivity for Court Personnel, Nashville TN  
 Dec. 10-14 In-Court Management - Defensive Tactics, Brooklyn, NY  
 Dec. 11-14 Effective Productivity for Court Personnel; San Juan, PR  
 Dec. 18-21 Effective Productivity for Court Personnel; St. Thomas, VI  
 Jan. 15-18 Effective Productivity for Court Personnel; Pittsburgh, PA  
 Jan. 21-23 Seminar for Federal Defenders; San Antonio, TX

THE THIRD BRANCH

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## THE FEDERAL JUDICIAL CENTER

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NOVEMBER, 1979

## CRIMINAL CODE MOVES FORWARD

The Department of Justice and the Federal Courts:  
Policies and Priorities

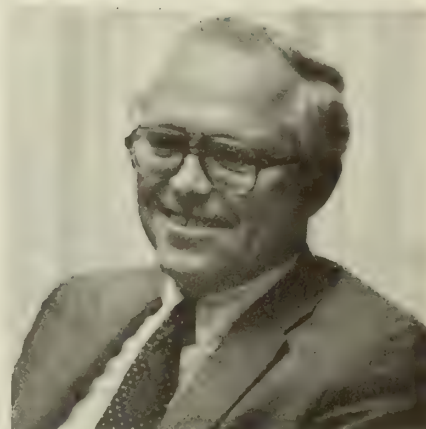
### AN INTERVIEW WITH BENJAMIN R. CIVILETTI

Benjamin R. Civiletti became this country's 73rd Attorney General on August 16th, succeeding Griffin B. Bell of Georgia, who resigned August 15th to return to private practice.

The new Attorney General brings a wealth of experience to his new position: He was a law clerk to a federal district judge in Baltimore, he was an Assistant United States Attorney for two years; and from 1964 until last March he was engaged in private practice.

Attorney General Civiletti also has experience in other Department of Justice posts; he was Assistant Attorney General in charge of the Criminal Division from March, 1977 to May 1978, when he became Deputy Attorney General.

The following interview was



conducted October 10.

Mr. Attorney General, you have been in office since mid-August. Have you had ample time to formulate some policies on the priorities for cases you believe the Department of Justice should file in the federal courts?

see INTERVIEW p. 4

### CHIEF JUSTICE MEETS WITH MET CHIEFS AT SEMI-ANNUAL MEETING

The Conference of Metropolitan District Chief Judges, representing the thirty district courts with six or more authorized judgeships, held its semi-annual meeting from Wednesday October 17 through Friday October 19, in Williamsburg, Virginia.

Chief Justice Warren E. Burger met with the Conference on Friday morning for an open discussion of a wide range of topics. Among other things, the Chief Justice:

- Elaborated on the Judicial

Conference's September 1979 resolution proposed by the Court Administration Committee, to authorize designation of a panel of senior judges, available on request of Chief Judges, for assignment to handle protracted cases. The Chief Justice stressed that the panel would not duplicate the functions of the Judicial Panel on Multidistrict Litigation. Its purpose instead is to make an experienced senior judge

see MET CHIEFS p. 8

Over the last few months both houses of Congress have been conducting hearings on legislation which would for the first time completely codify, revise and reform federal criminal law. The Senate Judiciary Committee and the House Subcommittee on Criminal Justice have received substantial testimony on two separate legislative proposals, and markup is in progress in both chambers. The Senate committee hopes that its bill, S. 1722, will be reported to the full Senate before the end of the year, and the House subcommittee, considering a draft bill, has set a target date of shortly after Thanksgiving for the presentation of a bill to the full Judiciary Committee.

**Background.** Study of the entire area of federal criminal laws began with the congressionally-created Brown Commission in 1960. The Commission's recommendations were submitted to the President in 1971, but the enactment of legislation has continually proved elusive. The current Senate bill evolved from last year's S.1437, which passed the Senate but died in the House. S. 1437, in turn, evolved from S.1, which died without action by the Senate Judiciary Committee in 1975. The House had in past years disagreed with the Senate on the need for extensive criminal code reform, but the House

See CODE p. 2



CODE from p. 1

Criminal Justice Subcommittee this year spent seven months preparing a new draft.

Although differences between the Senate and House proposals are not insignificant, the chairmen of the respective committee and subcommittee, Senator Edward M. Kennedy and Congressman Robert F. Drinan, have stated that they are in substantial agreement on the basic ingredients of a new criminal code. (See interviews in *The Third Branch*, July and September 1979.)

The two bills are similarly organized and share much in the way of content. Both reduce the number of possible criminal states of mind from the current 60 to 4—intentional, knowing, reckless, and negligent. Both drafts also consolidate the listing of federal felonies and misdemeanors and, in a highly controversial area, create new sentencing procedures.

**Sentencing Proposals.** In an effort to reduce unfair sentencing disparities, the bills create five classes of felonies, four grades of misdemeanors, and an infraction. A maximum penalty is then assigned to each class of crime, although the bills differ somewhat in the actual penalty assigned to each class. Both versions provide that punishment can be in the form of probation, fine, or imprisonment, and the House draft also authorizes a "conditional discharge," a form of unsupervised release that imposes fewer restrictions than probation.

For the judge formulating a sentence, both bills require consideration of certain factors such as the history and characteristics of the defendant and the nature and circumstances of the offense. The House draft additionally mandates a consideration of "effective alternatives" to incarceration. Under both bills, the sentencing judge must state the reasons for the imposition of a particular sentence.

Both House and Senate versions also call for the promulgation of sentencing guidelines to assist judges in the selection of penalties in individual cases. While the guidelines are not completely binding, under the House draft a sentencing judge must explain any departure from them; the imposition of a sentence greater than that suggested by the guidelines authorizes an appeal by the defendant. A sentence within the guidelines may be appealed only with leave of the Court of Appeals. The Senate bill incorporates similar provisions and additionally permits the Government to appeal if the sentence imposed is less than that recommended by the guidelines.

There are major differences between the bills in the composition of the committees that would promulgate these guidelines. The House version, which is favored by the Judicial Conference, vests guideline-drafting authority in a committee of the Conference, four of whose seven members are to be United States judges and three of whom are to be individuals who have never served on a federal or state bench. The committee's draft guidelines would be subject to the approval of the Judicial Conference and Congress. The Senate bill, on the other hand, calls for the executive branch to play the lead role in creating the committee. Three members of the seven member committee, including the chairman, are to be appointed by the President with the advice and consent of the Senate. The remaining four members are to be selected by the President from a list of at least seven United States judges submitted by the Judicial Conference.

Because the goal of the legislation is that the defendant actually serve the full term of the penalty imposed, the House draft calls for the abolition of parole and the Senate bill

phases out parole over a five year period. The House draft also eliminates the possibility of "good time" reduction in sentences.

**Testimony Received.** Although much of the testimony before the committees has endorsed the concept of omnibus criminal code reform, the sentencing provisions have sparked considerable disagreement among witnesses testifying before the legislators. The American Bar Association, for example, presented to the House its objections to the abolition of parole, and it advocated retention of "good time." The National Legal Aid and Defender Association similarly opposed the elimination of parole and good time, and called for greater flexibility in judicial discretion in sentencing. The American Civil Liberties Union, believing that both bills place undue emphasis on incarceration, told the Senate committee it favors the development of a range of alternatives to incarceration and the retention of parole for a transitional period of five years. In House testimony, Federal Bureau of Prisons Director Norman A. Carlson supported the promulgation of sentencing guidelines which, he said, would make parole "duplicative and unnecessary," although he did call for retention of parole to deal with offenders sentenced under existing laws.

Andrew Von Hirsch, Professor at the Graduate School of Criminal Justice at Rutgers University and a noted writer in the field of criminal sentencing, endorsed sentencing guidelines as bringing about a fairer system of punishment, but he also advocated retention of parole until it can be determined that the guideline system is functioning as intended. Taking the opposing position was former district court judge and deputy attorney general Harold

see Code p. 3



CODE from p. 2

R. Tyler, Jr., who criticized any plans for the retention of parole as bringing confusion and unfairness to both the sentenced offender and the public. He did endorse, however, creation of a "safety valve procedure" for the review of the occasionally unjust sentence.

[Recently, the House Subcommittee responded to this criticism and voted to retain parole. It is contemplated that additional provisions will be drafted to require a study of the continued need for parole after the new code has gone into effect.]

Speaking for the Judicial Conference of the United States, Judge Alexander Harvey II (D. Md.) told the subcommittee that the Conference "generally approved" of the House draft but has specific objections to, among other things, the definitions of culpable states of mind and defenses, the provisions for preventive detention, the elimination of the Youth Corrections Act, and the earliness of the legislation's proposed effective date of January 1, 1983. Judge Gerald B. Tjoflat (CA-5), Chairman of the Conference Committee on the Administration of the Probation System, offered several criticisms of the legislation as it affects probation, and he called for the creation of a program of voluntary pretrial community supervision in lieu of prosecution, which, if successfully completed by the offender, would result in dismissal of charges. He generally praised the proposed establishment of sentencing guidelines. Speaking for the Conference Committee on the Administration of the Federal Magistrate System, Judge Charles M. Metzner (S.D.N.Y.), identified several inconsistencies between the House draft, current law and the Federal Magistrate Act (signed into law

see CODE p. 8



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From November 12-17, the Federal Judicial Center conducted a seminar for newly appointed district court judges. The above photographs were taken at the Dolley Madison House during the week. 1. Judges C. Weston Houck (D. SC), Shirley B. Jones (D. MD) and Martin F. Loughlin (D. NH) pay close attention to one of the many presentations. 2. Prof. Arthur R. Miller of Harvard makes a point during a discussion of federal class actions—past, present and future. 3. Judge Susan H. Black (M.D. FL) takes notes. 4. Judge Sylvia H. Rambo (M.D. PA) participates in a computer assisted exercise on the rules (and exceptions) of hearsay. 5. Seminar lecturers Judge Damon J. Keith (CA-6) and Judge Hubert L. Will (N.D. IL) are greeted by Mr. Justice Byron S. White. 6. Judge Benjamin F. Gibson (W.D. MI) strikes a studious pose.



## AN INTERVIEW WITH BENJAMIN R. CIVILETTI

from p. 1.

Not new priorities really. The priorities that the Department has followed generally over the last two and one-half to three years are ones that I helped formulate with Judge Bell, and as an overall proposition we will continue those priorities: for example, in the criminal area the emphasis on public corruption, white collar crime, drug abuse and organized crime; in the antitrust area, price fixing. We will continue to complete the monitoring and evaluation of shared monopolies with a view toward bringing at least a half a dozen or perhaps more cases in that area. New emphasis will be placed in the civil rights area. In addition to the gamut of school cases and employment cases which are so important, we will look closely at police brutality allegations, sex discrimination and voting rights and annexation question cases. I think the overall concept which the Department is pursuing is to look to the simplest, the most effective case which would bring the greatest remedy, avoiding past problems such as those experienced in institutional and antitrust litigation.

**Complex and protracted cases are increasingly a problem in the federal courts in that they take an inordinate amount of judicial time and are enormously expensive. Do you have any solutions to suggest for those cases where the Department of Justice is a party to the litigation?**

I have no dramatic solution. I think that we will always have a small number of complex and protracted cases. I think their cost in terms of judicial time, in terms of private and governmental investment of manpower, and jurors' time are such that, when the Department is a party, we have to be extremely careful in the original determinations to bring the case, to exhaust every possible means of disposition short of actual litigation. And in fashioning the suit, instead of relying on a half a dozen theories, we have to

attempt to evaluate and choose the soundest theory with the strongest case and attempt to rifle-shoot instead of shotgun our approach. Once the litigation is begun in a complex and protracted case, then, in partnership with the court, I think we must do everything possible to expedite reasonable discovery, have milestones with regard to isolation of the issues and follow a constant and consistent pattern in pretrial proceedings to narrow the actual trial litigation of the case to its simplest elements.

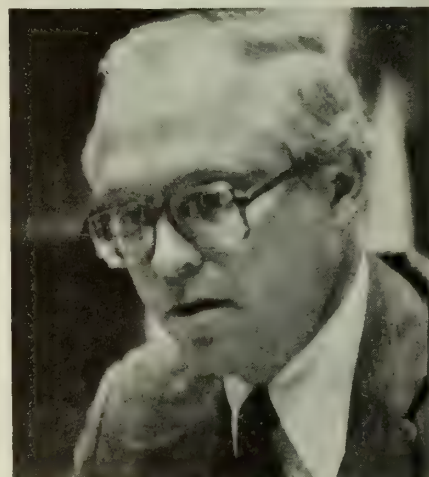
**There have been reports in the press that there has been a substantial decline in the number of antitrust cases filed by the Department of Justice during this administration. Does this reflect a change in policies followed by previous administrations?**

I think the answer is generally no, except perhaps a little greater care. We have had a review of the decline to see if we could isolate the causes. There does not seem to be any outstanding reasons of policy for the 20 percent decline in the cases, and it does not seem to be segregated in one area or another. I think it may be just a slight pendulum swing depending more coincidentally on investigations and the type of cases than any gaps or different directions in the administration of the antitrust law.

**A number of complaints have been reported of police brutality, particularly in large cities throughout the United States. In at least one instance, this has resulted in a suit against the city and its officials. Do you view this kind of litigation as an effective remedy to address the problem of police brutality? Another related question: Do you believe that police brutality is on the increase?**

The answer to the first question is: I hope so. The answer to the second question is: No. Generally, police

departments today are better educated, better trained and have a greater respect for individual rights than in the past. Remedial devices or systems are in place in most jurisdictions which provide for transfers or reassignments and early identification of the disposition of an officer to panic or to fail to



observe departmental rules in emergency circumstances.

There are pockets of brutality which are troublesome and serious to the particular community in which they exist, and troublesome and serious to the Department. They arise from a number of circumstances: sometimes from the attitude of the community; sometimes from the attitude of the hierarchy in a community; sometimes because of negligence or incompetence in the department; and sometimes because of either developed or sudden abrasion or conflict within the community itself because of changes in the environment, such as population, or other such circumstances which overload normal police-community relations. In such instances we try to assist in a multitude of ways, last of which, of course, are individual suits against officers for violations of criminal civil rights statutes. In this particular instance we sued the city and its officials—a circumstance wherein we attempted to obtain or will attempt to obtain systemic relief to a very serious and widespread problem.



Several bills currently pending in Congress could have a great impact on the workload of the federal courts, which could also mean additional workloads for the United States Attorneys. Does the Department of Justice cooperate with the judiciary committees of the Senate and House to assess this impact on the courts and to make recommendations?

We try, in as sound a way as we can, to evaluate the effect of statutes on the workload of the Department, the United States Attorneys, on litigation, and, as a consequence, on the federal courts. Our statistical tools for doing this are not great, and the predictability of such evaluations is sometimes difficult to achieve. But, within the knowledge and experience of the Department, and with the statistical tools available to us, we frequently render our general views—informally and formally—on the consequence of legislation which deals with the workload of the courts and as a consequence the workload of the Department in representing the Government in the federal courts.

Several proposals have been made in Congress related to judicial tenure and discipline (see related story p. 7), particularly legislation introduced by Senators Nunn, DeConcini and Kennedy. The Judicial Conference of the United States has also taken a stand on this issue. Is the administration going to support any of the existing proposals or propose alternatives of its own on this subject?

The answer to the last part of the question I believe is, no. The answer to the first part is, I don't know whether the administration is going to take a position or not. It has not taken an absolute position as yet. The Department is still studying the alternatives that have been presented by the different bills introduced by Senators Nunn, DeConcini and Kennedy. As to the principle involved, I believe the

Department generally thinks that the present system, which in a simple description is dependent upon either impeachment—which is totally impractical—or an informal remedy within the judicial council of each circuit, is not adequate and that some form of procedure different from either of those two alternatives is appropriate. I have not come to a conclusion or opinion myself as to whether that can be done within the framework of the Judicial Conference or the circuit councils or whether it needs a greater independence as reflected by the legislative proposals which have been introduced. I am extremely sensitive to and appreciative of the necessity to preserve the integrity and independence of the judiciary and I would not want to see any legislative proposal, although intended in good faith for remedial purposes, inadvertently impose or intrude on that independence and integrity which is so essential to the strength of the third branch of government.

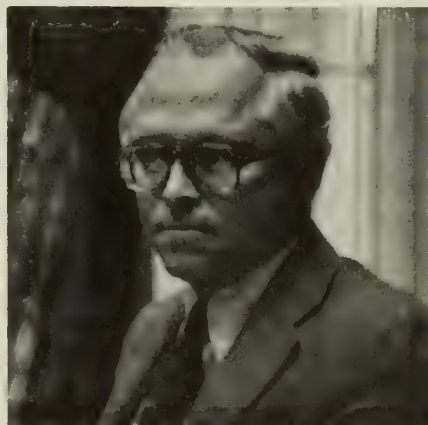
**The Department of Justice opposed the Speedy Trial Act concept when it was first proposed in 1974. When the recent amendments to the Act were under consideration, one of the Assistant Attorneys General testified that the Department now supports the Speedy Trial Act concept. What events precipitated the Department's change in position?**

Experience. We've had five years of experience with the Speedy Trial Act concept. We have learned that it is beneficial to the expedition of government criminal business in the courts and that as a general proposition it does not have serious effects on the fair conduct of that business. The Department viewed the proposed amendments to the Speedy Trial Act in exactly the same manner as the Judicial Conference. Neither of us succeeded exactly in our proposal to simplify the Act and to extend the general time period to 180 days, but

collectively we were able to succeed in postponing for one year what would have been a very adverse consequence—the imposition of final sanctions as of July 1st of this year. I intend during the course of this year to have prepared a full analysis and report to the Congress, so that the Congress may consider the needed remedial changes in the Speedy Trial Act while preserving the principal benefits of the Act, which include a very short time frame for incarcerated defendants.

**In at least two of the circuit judicial conferences held this past summer, discussion took place on the subject of representation by the Government in the federal courts. Does this administration plan on studying this subject with a view toward making changes or to spell out with more specificity which cases the Department of Justice will delegate to lawyers in other departments or agencies in the Executive Branch?**

I might answer this question in a general way. I am of the firm belief that the Department of Justice ought to be the litigating authority for all departments,



agencies, bureaus and entities within the Federal Government. I think that the fractionalization of representation is bad for the courts, bad for the parties and bad for the public. I think it is tragic when the Government speaks with three voices on the same subject or issue. This sometimes happens because of independent litigating authority delegated by the Congress to see INTERVIEW p. 6



INTERVIEW from p. 5

agencies or new departments, such as the Department of Energy. So, to the extent that we have studied and are continuing to study the subject, it will be under the guiding principle of opposing any further delegation of authority to entities outside the Department of Justice in an attempt to demonstrate the wisdom of consolidating litigating authority in the Department of Justice where all the interests of the various departments can be considered and can be evaluated and accommodated. Our goal is that when the Government goes to court it speaks with one voice so that the court is not confronted with divergent views from the Federal Government.

An important piece of legislation before the 96th Congress is the proposed recodification of federal criminal laws. (See related story p.1.) A Department of Justice official has criticized one section of this legislation, saying it would seriously hamper the prosecution of white collar crimes. Others fear that the sentencing provisions will result in a transfer of discretion over sentencing from the Judicial to the Executive Branch during plea bargaining negotiations. What are your views on these problems and others raised by this legislation?

The amount of work that has been devoted to the Code, both by the Department and by congressional committees in the Senate and House is so substantial, and the value of the Code is so great, that we—all of us interested in criminal code reform—are more optimistic that we are in the best position for success or ultimate passage of the Code than we have been in the last ten years. The Department of Justice prefers the framework and substantive provisions that were passed by the Senate in the last term of the Congress in Senate Bill 1437. The Code, as it now stands in Congressman Drinan's subcommittee of the House Judiciary Committee, has some

provisions in it, perhaps as many as 20 items, which the Department has serious objection to and which would pose, we think, disadvantages to strong enforcement of federal law in the area of white collar crime. The Senate has introduced a modified form of the bill that they passed in the last session, this time under the heading of Senate Bill 1722. We hope that becomes the vehicle for consideration in the congressional conference if the full House passes the House version. We are also hopeful that most of the objections which the Department now has to a preliminary version of the Code can, through discussion, be modified and be adjusted so that the Department can be more positive than it is at the present time. We haven't given up at all on the Code despite the fact that Phil Heymann—who is the Department of Justice official who criticized those sections—did give very strong and detailed testimony before Congressman Drinan's subcommittee.

I don't have the same fear that some have expressed with regard to the sentencing provision of the Code, either that it will transfer discretion from the Judicial Branch to the Executive Branch or that it will, by recommending stronger determinant sentencing, remove the good work of the Parole Commission. I think that the principles embodied in the sentencing reform, which can be described euphemistically as "truth in sentencing," provide for the removal of disparity and will permit judges, within the

range of substantial discretion, to sentence like defendants committing like crimes under like circumstances to similar sentences. Further, it will to a greater extent than is now achievable, allow the judge to know not only the sentence that he imposes but the probable service of that sentence, which is not always the case at the present time.

**What is the Department of Justice doing to insure that its lawyers are not within that category of lawyers who have been described in the Devitt Committee Report, which studied advocacy, as "less than qualified" for litigating in the federal system?**

From the beginning of Judge Bell's term as Attorney General and accelerating from there, including my time, we have devoted an enormous amount of energy to revising and updating and broadening the Attorney General's Advocacy Institute. We are now training as many as 600 Government lawyers in basic litigation skills in a three-week course and we are providing another 40 courses in advanced specialized litigation. We have the Institute now in the main Justice Department building with new mock courtroom facilities. We have the benefit of the advice and expertise of four or five outside consultants who are constantly reviewing and critiquing all of our programs. I might add that we are benefited substantially by the fact that both district court and circuit court judges in the federal system volunteer to come at the end of each of these three-week sessions on criminal and civil cases to hear the actual conduct of one- and two-day mock trials. This is of enormous benefit to the Department, to the Judicial Branch and, of course, to the young men and women who are undertaking to represent the Government in the highest and best traditions of trial practice. ■

## The Third Branch

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**MAJOR LEGISLATION OF INTEREST TO *THE THIRD BRANCH* READERS**  
**96th CONGRESS, FIRST SESSION**

<b>Bill</b>	<b>House Status</b>	<b>Senate Status</b>
Federal Court Improvements Act of 1979—S. 1477		Passed, 10/30/79. Title 4 [the tax court of appeals provisions] have been referred for further consideration to the Committee on Finance
Judicial Conduct and Disability Act of 1979—S. 1873	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Incorporated into S.1477, which was passed on 10/30/79
Abolition of Diversity Jurisdiction—S.679 and H.R. 2202	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Hearings in the Committee on Judiciary concluded
Recodification of federal criminal laws—S.1722, S.1723 and House draft	In markup in Subcommittee on Criminal Justice	In markup in Committee on Judiciary
Law Enforcement Assistance Reform Act of 1979—S.241 and H.R. 2061	Passed, amended, 10/12/79	Passed, 5/21/79
	In Conference	
FBI Charter—S.1612 and H.R. 5030	Hearings being conducted in Subcommittee on Civil and Constitutional Rights	Hearings being conducted in Committee on Judiciary
Supreme Court Jurisdiction Act—S.450 and H.R. 2700	Pending before Subcommittee on Courts, Civil Liberties and Administration of Justice	Passed, 4/9/79
Dispute Resolutions Act—S.423	Placed on Union Calendar, 10/23/79	Passed, 4/5/79
Citizens' Right to Standing in the Federal Courts Act—S.680		Hearings being conducted in Committee on Judiciary

**SENATE APPROVES  
JUDICIAL DISCIPLINE  
BILL**

On October 30 the Senate approved S. 1873, the "Judicial Conduct and Disability Act of 1979," by a roll-call vote of 56 to 33. S. 1873 was approved, after almost five hours of debate, in substantially the same form in which it had been reported from the Senate Judiciary Committee by a vote of 11 to 4 on October 2. Before passing S. 1873, the Senate rejected by a 30 to 60 vote Senator Nunn's substitute proposal which would have authorized removal of a federal judge from office by a method

other than impeachment under Article I of the Constitution. Immediately following passage, the text was incorporated into S.1477, the "Federal Courts Improvements Act of 1979," previously approved by the Senate on September 7. Both bills were sent to the House of Representatives and are now pending before subcommittees of the House Judiciary Committee.

Reflecting approximately three months of Senate Judiciary Committee consideration, in which representatives of the Judicial Conference participated, S. 1873 provides

that:

- Any person may file a complaint in writing with the Judicial Council of a circuit alleging that a judge is incapable of performing his or her duties due to mental or physical disability or has engaged in conduct inconsistent with the effective and expeditious administration of the business of the courts.

- A Circuit Council, following an investigation of the complaint, may dismiss it: (1) either because it is frivolous or beyond the Council's jurisdic-

see DISCIPLINE p. 9



## CODE from p. 3

as P.L. 96-82 on October 10). He also suggested areas where the bill could make a clearer explanation of a magistrate's role under the new code.

**Other Provisions.** Aside from sentencing and parole, the bills contain several other provisions that would amend federal criminal law significantly.

- Both bills create a new crime of operating a racketeering syndicate. Similarly, the existing laws against loansharking are strengthened. Despite this, however, the Department of Justice testified before the House subcommittee that the new code would severely interfere with the prosecution of white collar crime. Among other shortcomings, a Department spokesman stated that the maximum fines for felony convictions are too low; that certain statute of limitations should not be reduced; that stiffer penalties should attach to violations of health, safety or environmental regulations, that a commercial bribery provision should be included, and that the Department's authority to prosecute fraud against the government should be expanded.

- The Senate bill codifies the Pinkerton doctrine, making a coconspirator guilty of every offense committed in furtherance of the conspiracy if the offense was "reasonably foreseeable." The House draft does not contain this provision, and it imposes vicarious liability only where one intentionally and knowingly aids or induces another to commit a crime.

- Existing laws on obscenity are substantially curtailed. The Senate bill makes it a crime to disseminate commercially obscene material for a profit or to disseminate such material to minors or those unable to avoid seeing it. The House draft contains no general obscenity provisions.

- Both bills add discrimination by sex to the definition of the crime of unlawful discrimination. ■■

## MET CHIEFS from p. 1

available to handle a lengthy trial that could otherwise seriously drain the judicial resources in any particular district and disrupt the court's calendar.

- Took note of the growing problems created by the inadequate per diem allowance, especially for those judges who must spend extended periods of time on assignment away from their homes. He reviewed various solutions short of legislation that had been explored, and reported that remedial legislation would presently be introduced.

- Reviewed the recommendations proposed by the Devitt Committee and approved by the Judicial Conference (see *The Third Branch*, October, 1979, page 1). Judge James R. Miller (D. Md.), a member of the Committee, also spoke on the implementation of the Committee recommendations. The Chief Justice took note, however, of recent developments in the law schools to increase the availability of clinical education and said these steps would likely, over the next few years, help alleviate some of the problems that the Devitt proposals are designed to meet. He pointed specifically to the law schools' receptivity to the ABA's Task Force on Lawyer Competency, which was created after the ABA's 1978 annual meeting and chaired by Cornell Law Dean, Roger C. Cramton.

- Discussed with the Conference the benefits that could be derived from designating District Court Administrators, an office analogous to that of Circuit Executive. He indicated that although such officers might technically be designated as "deputies" to the Circuit Executive, the Judicial Conference would make clear that District Court Administrators would be under the control and direction of the district courts rather than adjuncts to the Circuit Executive and Circuit Council. The Chief Judges unanimously adopted a

**FJC RESIDENT VISITING SCHOLAR PROGRAM**

The Federal Judicial Center has announced a Visiting Scholar Program to allow one or more individuals with research interests that coincide with those of the Center to spend a year in residence at the Center.

The aim of the Visiting Scholar Program is to enhance the Center's work by obtaining special expertise in areas of particular need to the Center and by providing Visiting Scholars the opportunity to learn first-hand of the operations and special environment of federal judicial administration. Visiting Scholars may apply for assignment to any one of the Center's four divisions.

Applicants should have well developed interests, evidenced in relevant publications or experience, in areas that coincide with the needs and interests of the Federal Judicial Center.

Interested persons may obtain more information concerning the Visiting Scholar Program by writing to the Director of the Center.

resolution endorsing this arrangement.

The Conference agenda also included a presentation by Judge Murray Gurfein (CA-2) on the operation of the Judicial Panel on Multidistrict Litigation, and reports on Federal Judicial Center research on discovery and discovery control, as well as on current and potential practices in the district courts to adjust Chief Judges' caseloads to compensate for their special administrative workload. ■■



**PERSONNEL from p. 10**

Harold A. Ackerman, U.S. District Judge, D. NJ, Oct. 31  
 Dickinson R. Debevoise, U.S. District Judge, D. NJ, Oct. 31  
 H. Lee Sarokin, U.S. District Judge, D. NJ, Oct. 31  
 Anne E. Thompson, U.S. District Judge, D. NJ, Oct. 31  
 Neal P. McCurn, U.S. District Judge, N.D. NY, Oct. 31  
 Frank H. Seay, U.S. District Judge, E.D. OK, Oct. 31  
 Lee R. West, U.S. District Judge, W.D. OK, Oct. 31  
 Thomas R. Brett, U.S. District Judge, N.D. OK, Oct. 31  
 James O. Ellison, U.S. District Judge, N.D. OK, Oct. 31

**APPOINTMENTS**

Matthew J. Perry, Jr., U.S. District Judge, D. SC, Sept. 23  
 Abner J. Mikva, U.S. Circuit Judge (CA-DC), Sept. 27  
 Veronica D. Wicker, U.S. District Judge, E.D. LA, Sept. 28  
 Patrick E. Carr, U.S. District Judge, E.D. LA, Oct. 1  
 Edward C. Reed, Jr., U.S. District Judge, D. NV, Oct. 1  
 William L. Hungate, U.S. District Judge, E.D. MO, Oct. 1  
 Benjamin F. Gibson, U.S. District Judge, W.D. MI, Oct. 3  
 Cornelia G. Kennedy, U.S. Circuit Judge (CA-6), Oct. 4  
 Howard F. Sachs, U.S. District Judge, W.D. MO, Oct. 5  
 Scott O. Wright, U.S. District Judge, W.D. MO, Oct. 5  
 Boyce F. Martin, Jr., U.S. Circuit Judge (CA-6), Oct. 5  
 Richard M. Bilby, U.S. District Judge, D. AZ, Oct. 5  
 Eugene P. Spellman, U.S. District Judge, S.D. FL, Oct. 9  
 Edward B. Davis, U.S. District Judge, S.D. FL, Oct. 9  
 Avern Cohn, U.S. District Judge, E.D. MI, Oct. 9  
 Richard D. Cudahy, U.S. Circuit Judge, CA-7, Oct. 10  
 Jim R. Carrigan, U.S. District Judge, D. CO, Oct. 10  
 Zita L. Weinshienk, U.S. District Judge, D. CO, Oct. 10  
 Lynn C. Higby, U.S. District Judge, N.D. FL, Oct. 10  
 Betty B. Fletcher, U.S. Circuit Judge (CA-9), Oct. 15  
 Nathaniel R. Jones, U.S. Circuit Judge (CA-6), Oct. 15  
 J. Jerome Farris, U.S. Circuit Judge (CA-9), Oct. 16  
 James W. Kehoe, U.S. District Judge, S.D. FL, Oct. 16

**CALENDAR from p. 10**

Jan. 31 - Feb. 1 Procurement and Contracting Workshop for Bankruptcy Clerks; Montgomery, AL  
 Jan. 31-Feb. 1 Workshop for District Judges (CA-8 and CA 10); Phoenix, AZ  
 Feb. 4-8 Introduction to COURTRAN II STARS Training; Washington, DC  
 Feb. 11-13 Fiscal Workshop for Bankruptcy Clerks; Reno, NV  
 Feb. 12-13 Introduction to COURTRAN II INDEX Training; Washington, DC (Date tentative)  
 Feb. 14-15 Procurement and Contracting Workshop for Bankruptcy Clerks; Reno, NV  
 Feb. 19-22 Effective Productivity for Court Personnel; San Diego, CA

**DISCIPLINE from p. 7**

tion; (2) because it is related to the merits of a decisional or procedural ruling; or (3) because it raised a question reviewable under another provision of law. If the Council does not dismiss the complaint, it may: (1) request that the judge voluntarily retire; (2) temporarily suspend assignment of new cases to the judge; (3) either privately or publicly reprimand the judge; or (4) take other "appropriate" action short of removal from office.

Gene E. Brooks, U.S. District Judge, S.D. IN, Oct. 17  
 William L. Beatty, U.S. District Judge, S.D. IL, Oct. 19  
 Hugh Gibson, Jr., U.S. District Judge, S.D. TX, Oct. 23  
 Joseph C. Howard, Sr., U.S. District Judge, D. MD, Oct. 23  
 Shirley B. Jones, U.S. District Judge, D. MD, Oct. 23

**ELEVATIONS**

John Feikens, Chief Judge, E.D. MI, Oct. 4  
 Jack Roberts, Chief Judge, W.D. TX, Oct. 10

**DEATH**

Harold Leventhal, U.S. Circuit Judge (CA DC), November 20

**NOTICE TO OUR READERS**

*The Third Branch* is updating its mailing list.

All non-federal subscribers should have received a post card asking if continuation of their subscription is desired. This card should be returned within 30 days of receipt. If the subscription is not actively renewed future mailings of *The Third Branch* will be discontinued.

Feb. 25-27 Fiscal Workshop for Bankruptcy Clerks; Amarillo, TX  
 Feb. 28-29 Procurement and Contracting Workshop for Bankruptcy Clerks; Amarillo, TX

• Upon final action by a Circuit Council either the complainant or the judge may petition a newly established Court of Judicial Conduct and Disability for review of the action. That Court, consisting of five active Article III judges appointed by the Chief Justice of the United States, can either review the record established by the Council or conduct a *de novo* investigation of its own. The Court's range of actions, if it does conduct its own investigation, is identical to the range of actions available to the Council. In addition, however, the Court is required to refer to the House of Representatives any case involving conduct which the Court believes "would constitute an impeachable offense."

House hearings may commence in early December and will continue into the second session of the 96th Congress.

Both Senator Mathias and Senator Heflin, who had filed dissenting views to the Senate Judiciary Committee's Report accompanying S.1873, opposed final approval of the bill during Senate floor debate on October 30. ■■



# DOJ calendar

- Nov. 26-28 Workshop for District Judges (CA-9); Palm Springs, CA  
 Nov. 28-29 Judicial Conference Subcommittee on Bankruptcy Rules; Orlando, FL  
 Dec. 4-7 Effective Productivity for Court Personnel; Nashville, TN  
 Dec. 10-11 Judicial Conference Subcommittee on Civil Rules; Washington, D.C.  
 Dec. 10-14 Orientation Seminar for U.S. Probation Officers; Washington, D.C.  
 Dec. 10-14 In-Court Management Seminar; Brooklyn, NY  
 Dec. 10-11 Effective Productivity for Court Personnel; San Juan, PR  
 Dec. 14 Judicial Conference Subcommittee on Appellate Rules; Washington, DC.  
 Dec. 18-21 Effective Productivity for Court Personnel; St. Croix, VI  
 Jan. 7-9, Fiscal Workshop for Bankruptcy Clerks; Wilmington, DE  
 Jan. 10-11 Procurement and Contracting Workshop for Bankruptcy Clerks; Wilmington, DE  
 Jan. 13-19 Seminar for Newly Appointed District Judges; Washington, DC  
 Jan. 15-18 Effective Productivity for Court Personnel; Pittsburgh, PA

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- Jan. 21-23 Seminar for Federal Public Defenders; San Antonio, TX  
 Jan. 21-25 Introduction to COURTRAN II STARS and INDEX Training; Washington, DC  
 Jan. 22-25 Effective Productivity for Court Personnel; Oxford, MS  
 Jan. 28-30 Fiscal Workshop for Bankruptcy Clerks; Montgomery, AL  
 see CALENDAR p. 9

# PERSONNEL

## NOMINATIONS

- Juan M. Perez-Gimenez, U.S. District Judge, D. PR, Oct. 23  
 Edward D. Price, U.S. District Judge, E.D. CA, Nov. 1  
 Horace T. Wood, U.S. District Judge, N.D. GA, Nov. 1  
 David K. Winder, U.S. District Judge, D. UT, Nov. 1  
 Jose A. Cabranes, U.S. District Judge, D. CT, Nov. 6  
 Robert J. McNichols, U.S. District Judge, E.D. WA, Nov. 6

## CONFIRMATIONS

- Anna Diggs-Taylor, U.S. District Judge, E.D. MI, Oct. 31  
 Juan G. Burciaga, U.S. District Judge, D. NM, Oct. 31  
 Barbara B. Crabb, U.S. District Judge, W.D. WI, Oct. 31  
 Terence T. Evans, U.S. District Judge, E.D. WI, Oct. 31  
 Alan N. Bloch, U.S. District Judge, W.D. PA, Oct. 31  
 Thomas A. Clark, U.S. Circuit Judge (CA-5), Oct. 31  
 Arthur L. Alarcon, U.S. Circuit Judge (CA-9), Oct. 31  
 Harry Pregerson, U.S. Circuit Judge (CA-9), Oct. 31  
 Stephanie K. Seymour, U.S. Circuit Judge (CA-10), Oct. 31  
 Alcee L. Hastings, U.S. District Judge, S.D. FL, Oct. 31  
 Scott E. Reed, U.S. District Judge, E.D. KY, Oct. 31  
 Robert H. Hall, U.S. District Judge, N.D. GA, Oct. 31  
 Dale E. Saffels, U.S. District Judge, D. KS, Oct. 31

see PERSONNEL p. 9

### THE THIRD BRANCH

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## THE FEDERAL JUDICIAL CENTER

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# The Third Branch

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December, 1979

### FINANCIAL DISCLOSURE LAW FOR JUDGES UPHELD

The Court of Appeals for the Fifth Circuit upheld the constitutionality of the requirement in the Ethics in Government Act of 1978 that federal judges annually provide personal financial statements available for public inspection. *Duplantier v. United States*, No. 79-2351 (48 U.S.L.W. 2375, 5th Cir. Nov. 19, 1979).

The action was filed last May by six United States district court judges as a class action on their behalf and on behalf of all others similarly situated. In an opinion denying plaintiffs' motion for a preliminary injunction, Judge Robert F. Collins (E.D. La.) said the Court was precluded from addressing the merits because of lack of jurisdiction over certain of the defendants (the Judicial Ethics Committee of the Judicial Conference, the see DISCLOSURE p. 3

### ADMINISTRATIVE OFFICE OF THE U.S. COURTS MARKS 40TH ANNIVERSARY

The Administrative Office of the United States Courts recently marked the fortieth anniversary of its service to the federal judiciary. Since beginning operations under its first director, Henry Chandler, in November 1939, the Administrative Office has played a prominent role in a period of unparalleled growth in the federal court system.

The act establishing the Administrative Office (28 U.S.C. §§601-611) was hailed by Chief Justice Vinson in 1949 as "something of a Declaration of Independence for the federal courts." This act removed the control of funding, budget accounting and other details of judicial administration from the Department of Justice—the chief litigator before the courts—and vested it within the

judicial branch. The creation of the Administrative Office was just one part of the establishment of a system of judicial self-government which is still in operation today. Under this system, policy is made by the Judicial Conference of the United States and is implemented within each of the eleven circuits under the supervision of the circuit judicial councils. The facts and information upon which these bodies rely to make their decisions, as well as myriad support services, are provided by the Administrative Office.

The Administrative Office originally consisted of two divisions, one to handle financial matters and the other to handle statistics on the workload of the courts. Additionally, a small staff exercised general supervision over the federal probation system. Today, the Administrative Office functions through eleven divisions, five of which manage programs—Bankruptcy, Clerks, Magistrates, Criminal Justice Act and Probation—and six of which provide support services—Administrative Services, Financial Management, Information Systems, Management Review, Personnel, and Statistical Analysis and Reports. Additional services are provided through the office of the General Counsel and the office on Legislative Affairs.

In 1940, Administrative Office statisticians received approxi-

### UPDATE ON JUDGESHIPS

As of December 5, nominees for 102 of the 152 judgeships created by the Omnibus Judgeship Act of 1978—29 circuit and 73 district—had been confirmed by the Senate. Seventeen other nominees—three circuit and 14 district—await Senate confirmation. According to the Department of Justice, all but six of the remaining judgeships have potential nominees under active consideration.

During 1979, 22 other

judgeship nominees—four circuit and 18 district—have been confirmed by the Senate. Three district court nominees currently are awaiting confirmation. These positions have become vacant because of retirements, deaths, resignations and the elevation of district court judges to circuit courts. Justice Department figures show 40 remaining vacancies, ten of which have potential nominees under active consideration.

see ANNIVERSARY p. 2



ANNIVERSARY from p. 1

mately 240,000 records to compile. Today, they handle more than a million such documents each year. Processing of these forms has progressed from simple hand-tallying to key-punching of computer cards to today's direct entry of data into the main computer. The number of judges whom the Administrative Office serves has likewise increased, from 247 authorized district and appellate positions in 1940 to 648 in 1979. The federal probation system employed 233 probation officers to supervise 35,000 probationers and parolees in 1940; currently 1,697 such officers have responsibility over 66,000 persons under supervision. In 1948, the first year of the Referee's Salary Act, 18,500 bankruptcy cases of all types were filed, while 226,000 such cases were filed last year. Similar increases in the number of magistrates (successors to the former U.S. commissioners), clerks and other judicial personnel have also been experienced.


Despite this record of growth, administrative costs for the courts have been consistently low. Operating the Administrative Office in 1958 required only 2.2% of the judicial budget. Warren Olney, III, the second Director of the Administrative Office, commented that this figure for administrative costs would be considered "exceptionally low" in private industry. In 1979, administrative expenses took 2.6% of the judiciary's budget (exclusive of appropriations for the Supreme Court).

The Administrative Office has, since its inception, been involved in legislative affairs affecting the federal courts. In 1939, the Administrative Office prepared a report which formed the basis for Judicial Conference-sponsored legislation establishing the system of

official court reporters. During this same period, the Administrative Office provided information to a committee formed by the Attorney General to review the system of referees in bankruptcy. This committee's report led to the creation of the bankruptcy division in 1942, and was an important first step in the ultimate passage of legislation which changed the referees' compensation system from fees to salaries.

Some of the areas of past legislative concern continue to be at issue today. In comments made 20 years ago, former Director Olney predicted that the change in jurisdictional amount for diversity cases from \$3,000 to \$10,000 and other reforms would reduce by perhaps one-third the workload of the district courts. Whatever the short-term gains from those reforms, the number of civil case filings in district courts has increased 345% since 1940 (161% since 1960), yet calls by the Judicial Conference, the Attorney General and others for the abolition of diversity jurisdiction have not produced legislative change.

In 1958, Director Olney called for an omnibus judgeship bill to reduce what he considered a very serious shortage in judgeship positions. Although new positions were created by Congress in 1961, 1966, and 1968, the need for more judges has grown unabated, resulting in 1978 in the largest single increase in the number of judges in the nation's history.

In the face of continued growth and continued improvement in the judiciary, it must be concluded that the Administrative Office has successfully fulfilled the mandate set for it forty years ago. As Judge Harold R. Medina (CA-2) said of the Administrative Office ten years after its founding, "It is difficult for those of us connected with the system to understand how the federal courts could ever have [functioned] without it." 

## JUDICIAL CONFERENCE APPROVES NATIONAL FEDERAL COURT LIBRARY SYSTEM

At its September 1979 meeting, the Judicial Conference of the United States approved a proposal to set up a national court library system based on existing circuit court central libraries "which would provide library and information services to the entire judiciary wherever located within the circuit." Satellite or branch libraries, professionally staffed, would be established at cities within the circuit where there is a demonstrated need for this service and where a circuit judge is also in residence. These libraries will also have responsibilities to the entire federal judiciary. Their librarians will arrange for the exchange of materials with other circuits as well as sources outside the judicial system.

The unified circuit-wide system will eventually be expanded by establishing satellite libraries with professional staff in courts where there is no circuit judge. Currently there is statutory authority only for circuit courts to appoint librarians, but it is expected that legislation removing this limitation will be introduced in the next session of Congress.

The central circuit and satellite concept is already functioning in the Third Circuit, where satellite libraries are located in Newark, Wilmington, and Pittsburgh.

In October chief librarians of the circuit courts met in Chicago to discuss implementation of this concept. At the conclusion of the conference, it was agreed that each would analyze the system currently in operation within their circuit to determine the need for satellite libraries. Other actions contemplated

see LIBRARY p. 5





## HOLIDAY MESSAGE FROM THE CHIEF JUSTICE

A decade ago, when I first extended personal holiday greetings to all in the "Federal Judicial Family," there were 416 authorized federal judgeships; today there are 648. With Senior Judges, the total is now 830. A special thanks is due them, for they have made an enormous difference in those years the Judiciary was gravely understaffed.

As we enter 1980, it seems especially appropriate that we contemplate what is happening to our federal court system; that we reflect a bit on our history.

That the system is in an era of growth as our society becomes more complex is obvious. Whether we like it or not the future will see more expansion. Decisions in the past quarter century or more have brought new problems to the Federal Judiciary, some that could never have been anticipated by our predecessors. We can take pride in a performance which shows that with each decade the federal judges have responded admirably with courage, determination and industry.

As we welcome 152 new judges coming into the system — along with a half hundred "replacements" — we can be proud of this record. We can take pride in saying to our new colleagues: you are entering a court system that has never failed this country. The federal courts have, over the years, faced enormously heavy caseloads brought to them by new legislation and by new social, political and economic problems. All of these changes have been met by imaginative and dedicated judges. New procedures and techniques for speeding up the process have evolved. Our mission — to deliver justice effectively and economically — is being performed.

And as we approach the Holiday Season, Mrs. Burger and I extend to all of you, and your loved ones, our best wishes for peace, health, and happiness.

*Warren E. Burger*



## BENCH BOOK FOR U.S. DISTRICT COURT JUDGES PUBLISHED

The Federal Judicial Center this month distributed the first installment of a new *Bench Book for United States District Court Judges*.

The book, which replaces a 1969 edition, is being mailed to all United States District Court judges. Included in this first distribution are six of the thirty-eight chapters which Volume I of the *Bench Book* will contain upon completion. Additional chapters will be distributed as they become available.

The Book is published in a three-ring loose leaf binder to facilitate the insertion of new material as well as any papers a judge may wish to add.

The compilation of the Book is under the direction of a committee of three district court judges who have served on the Board of the Center. Chairman of the committee is Judge Frank J. McGarr (N.D. Ill.).

### DISCLOSURE from p. 1.

Committee's Chairman, and the Clerks of all Article III courts). To avoid the possibility of irreparable injury, however, the Court issued a stay against enforcement of the Act until the jurisdictional question could be resolved.

On appeal, the Fifth Circuit held that jurisdiction was lacking over the above named defendants, but that the substantive issues could nonetheless be addressed as against those defendants over which jurisdiction was present (the United States and the Attorney General). In its 23-page opinion, authored by Circuit Judge Robert A. Ainsworth, the Court rejected all of plaintiffs' constitutional objections to the statute; affirmed the denial of the preliminary injunction; and vacated the district court's stay.



## MEDIA LIBRARY TO BE HIGHLIGHTED

Beginning in this issue, the Federal Judicial Center's Media Library will regularly be featured in a column listing recent acquisitions and topics of current interest which are available on loan.

In 1972, the Center established the Media Library as a source of educational resource material for federal court personnel. Initially a collection of audio cassettes recorded at Center-sponsored workshops and seminars, it has expanded today to include a growing selection of films and video cassettes. An *Educational Media Catalog*, listing the approximately 450 audio cassettes, 85 films and 50 video cassettes currently available, is being disturbed only to personnel in the federal courts.

The library's acquisitions include presentations by some of the finest legal scholars and practitioners in the country. A broad range of subjects is included—from civil and criminal case management to the utilization of technological advances, from professional responsibility and proper ethical conduct to effective time management and techniques of supervision. The collection is updated regularly to maintain its topical relevance.

Each film and audio or video cassette in the collection is available to any person employed by the judicial branch of the United States Government. Requests should be written on appropriate letterhead and sent to: Federal Judicial Center Media Library, 1520 H Street, N.W., Washington, D.C. 20005. Emergency telephone requests may be made by calling FTS 633-6024, or, for non-FTS users, 202-633-6024.

Loan period and circulation restrictions are in effect as follows:

- Audio cassettes—up to six different topics may be included in a single request and retained

for two weeks after the day of arrival.

- Video cassettes—up to four topics may be included in a single request and retained for one week after the day of arrival.

- Films—up to two topics may be included in a single request and retained for one week after the day of arrival.

All requests must include the call number assigned to the film or the audio or video cassette.

Audio cassettes can be played on any standard cassette player or recording unit. Video cassettes are either 3/4 inch U-Matic or 1/2 inch VHS format and must be played by a trained operator on a video cassette player or recording unit designed for 3/4 or 1/2 inch cassettes. Films are all 16mm for projection on standard 16 mm equipment. More detailed information about equipment guidelines may be obtained from the Media Library.

Audio cassettes recorded at the Seminar for Bankruptcy Judges held August 1-3 in St. Petersburg, Florida are now available on request and are listed below:

### B-24

The Federal Judge  
Judge William J. Campbell  
Senior Chairman—Center  
Seminar Programs

### B-25

Judicial Responsibility for Case Management  
Judge Charles B. Renfrew (N.D. CA)

### B-26

The Judge and Settlement  
Judge J. Waldo Ackerman (C.D. IL)

### B-28

The Non-Jury Trial  
Judge Alvin B. Rubin (CA-5)

### B-30

Effective Jury Utilization  
Chief Judge Warren K. Urbom (D. NB)

### B-31

Effective Use of Personnel  
Judge Charles R. Weiner (E.D. PA)

### B-32

Federal Rules of Evidence  
Judge Clarence A. Brimmer (D. WY)  
Judge Charles R. Weiner (E.D. PA)

### B-33

Bankruptcy Administration  
Donald R. Burkhalter  
Attorney Advisor  
Task Force on United States Trustees  
United States Department of Justice

Berkeley Wright  
Chief, Bankruptcy Division  
Administrative Office of the United States Courts

Lawrence P. King  
Associate Dean  
New York University School of Law

### B-34

The Jury Trial  
Chief Judge Warren K. Urbom (D. NB)  
Judge Thomas D. Lambros (N.D. OH)

PERSONNEL from p. 6

## APPOINTMENTS

Mary M. Schroeder, U.S. Circuit Judge (CA-9), Oct. 12  
James C. Paine, U.S. District Judge, S.D. FL, Nov. 2  
Albert Tate, Jr., U.S. Circuit Judge (CA-5), Nov. 2  
Thomas R. Brett, U.S. District Judge, N.D. OK, Nov. 5  
James O. Ellison, U.S. District Judge, N.D. OK, Nov. 5  
Frank H. Seay, U.S. District Judge, E.D. OK, Nov. 5  
Anna Diggs Taylor, U.S. District Judge, E.D. MI, Nov. 5  
Alcee L. Hastings, U.S. District Judge, S.D. FL, Nov. 13  
Dale E. Saffels, U.S. District Judge, D. KS, Nov. 16

## DEATHS

James M. Carter, Senior Circuit Judge (CA-9), Nov. 18  
Leo Brewster, Senior U.S. District Judge, N.D. TX, Nov. 27.



## TWO FEDERAL JUDGES MOVE TO EXECUTIVE BRANCH

APPLICATIONS BEING  
RECEIVED FOR  
CIRCUIT EXECUTIVE  
POSITION IN EIGHTH  
CIRCUIT

**Position:** Circuit Executive for the Eighth Circuit. Approximate salary range: \$45,000 to \$50,000, commensurate with education and experience. Appointment subject to certification by Board of Certification for Circuit Executives.

**Responsibilities:** Under direction of the Court and pertinent statutes and rules, the Circuit Executive performs a broad range of tasks related to the business of the circuit including relationships with the circuit and district courts and the judicial council of the circuit.


**Qualifications:** Proven management and administrative skills. Undergraduate degree in management or related field and experience or specialized training in court administration desirable but not mandatory.

**To apply:** Send application and resume to: R. Hanson Lawton, 853 U.S. Courthouse, Kansas City, Missouri 64106.

Two federal judges in California have been named by President Jimmy Carter to fill high positions in the Executive Branch.

U.S. Circuit Judge Shirley M. Hufstедler, who has been on the Ninth Circuit for 11 years, was confirmed as Secretary of the newly created United States Department of Education. On December 6 Judge Hufstедler took her oath of office.


Judge Charles B. Renfrew, who has been on the U.S. District Court for the Northern District of California since 1971,

has been named to be the Deputy Attorney General. This office was vacated last August when Benjamin R. Civiletti became Attorney General. Judge Renfrew would be the second federal judge in recent history to resign a federal judgeship to take this position in the Department of Justice. One of his predecessors in this office was Judge Harold R. Tyler, Jr., who left the District Court for the Southern District of New York in 1975 to assume this post. Judge Tyler is now in private practice in New York City. 

## LIBRARY from p. 2

include proposing changes in the JSP level of the chief circuit librarians and submitting budget proposals which, if approved by Congress, would create new positions in federal court libraries and change the classification of existing temporary positions.

The proposal to adopt the central circuit and satellite concept nationwide was presented to Administrative Office Director William E. Foley last spring by Patricia Thomas, Chief of the Library Services Branch in the A.O. After approval by Mr. Foley, the plan was submitted to the ad hoc Committee on Libraries, which recommended favorable consideration by the Court Administration Committee. This Committee in turn presented it to the Judicial Conference.

This development in the area of the federal court library system evolved as a consequence of 19 recommendations—approved by the Judicial Conference—contained in the report of the Federal Judicial Center Board, *Improving the Federal Court Library System* (see *The Third Branch*, September 1978, page 4). 

## CALENDAR from p. 6

- Jan. 22-24 Judicial Conference Committee on Ethics; Palm Beach Shores, FL
- Jan. 22-25 Effective Productivity for Court Personnel; Oxford, MS
- Jan. 24 Judicial Conference Review Committee; Palm Beach Shores, FL
- Jan. 24 Judicial Conference Committee on the Administration of the Probation System; Singer Island, FL
- Jan. 25 Judicial Conference Joint Meeting of Ethics and Review Committee; Palm Beach Shores, FL
- Jan. 25 Judicial Conference Committee on the Administration of the Bankruptcy System; Washington, DC
- Jan. 28-29 Judicial Conference Committee on Court Administration; Singer Island, FL
- Jan. 28-29 Judicial Conference Committee on Intercircuit Assignments; Singer Island, FL
- Jan. 28-30 Fiscal Workshop for Bankruptcy Clerks; Montgomery, AL
- Jan. 30 Judicial Conference Committee on the Budget; Singer Island, FL
- Jan. 31-Feb. 1 Workshop for District Judges (CA-8 & CA-10); Phoenix, AZ
- Mar. 9-12 Seminar for Newly Appointed Federal Appellate Judges; Washington, DC

## The Third Branch

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## Co-editors:

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# PERSONNEL

## NOMINATIONS

Richard A. Enslen, U.S. District Judge, W.D. MI, Nov. 30  
 Diana F. Murphy, U.S. District Judge, D. MN, Nov. 30  
 Robert G. Renner, U.S. District Judge, D. MN, Nov. 30  
 Gilberto Gierbolini-Ortiz, U.S. District Judge, D. PR, Nov. 30  
 William M. Kidd, U.S. District Judge, S.D. W. VA, Nov. 30  
 Stephen R. Reinhardt, U.S. Circuit Judge (CA-9), Nov. 30  
 Helen J. Frye, U.S. District Judge, D. OR, Dec. 3  
 James A. Redden, Jr., U.S. District Judge, D. OR, Dec. 3  
 Owen M. Panner, U.S. District Judge, D. OR, Dec. 3  
 Barbara J. Rothstein, U.S. District Judge, W.D. WA, Dec. 3

## CONFIRMATIONS

Cecil F. Poole, U.S. Circuit Judge (CA-9), Nov. 26  
 William O. Bertelsman, U.S. District Judge, E.D. KY, Nov. 26  
 Peter H. Beer, U.S. District Judge, E.D. LA, Nov. 26  
 James T. Giles, U.S. District Judge, E.D. PA, Nov. 26  
 Lucius D. Bunton, III, U.S. District Judge, W.D. TX, Nov. 26  
 Harry L. Hudspeth, U.S. District Judge, W.D. TX, Nov. 26  
 Warren J. Ferguson, U.S. Circuit Judge (CA-9), Nov. 26  
 Milton L. Schwartz, U.S. District Judge, E.D. CA, Nov. 26

Dudley H. Bowen, Jr., U.S. District Judge, S.D. GA, Nov. 26  
 David K. Winder, U.S. District Judge, D. UT, Dec. 4  
 Juan M. Perez-Gimenez, U.S. District Judge, D. PR, Dec. 5  
 Horace T. Ward, U.S. District Judge, N.D. GA, Dec. 5  
 Jose A. Cabranes, U.S. District Judge, D. CT, Dec. 5  
 Robert J. McNichols, U.S. District Judge, E.D. WA, Dec. 5  
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## COMMITTEE ON THE JUDICIAL BRANCH APPOINTED

Under an authorizing resolution of the Judicial Conference at its September 1979 meeting, the Chief Justice has appointed a Committee on the Judicial Branch. This committee will examine the constitutional and historic basis of judicial tenure, judicial independence and other related matters.

Chief Judge Irving R. Kaufman (CA-2) has been named Chairman of the committee. Also named as members of the committee are Judge Arlin M. Adams (CA-3), Judge Robert A. Ainsworth, Jr., (CA-5), Senior Judge Oren Harris (E.D. AR), Judge James Harvey (E.D. MI) and Chief Judge Irving Hill (C.D. CA).

# DOJFC calendar

Jan. 7-8 Judicial Conference Subcommittee on Judicial Improvements; San Diego, CA  
 Jan. 7-8 Judicial Conference Subcommittee on Federal Jurisdiction; Charleston, SC  
 Jan. 7-9 Fiscal Workshop for Bankruptcy Clerks; Wilmington, DE  
 Jan. 10-11 Judicial Conference Advisory Committee on Criminal Rules; Washington, DC  
 Jan. 10-11 Judicial Conference Subcommittee on Supporting Personnel; Washington, DC  
 Jan. 10-11 Procurement and Contracting Workshop for Bankruptcy Clerks; Wilmington, DE  
 Jan. 13-19 Seminar for Newly Appointed District Judges; Washington, DC  
 Jan. 14-15 Judicial Conference Committee on the Administration of the Criminal Law; Coronado, CA  
 Jan. 15-18 Effective Productivity for Court Personnel; Pittsburgh, PA  
 Jan. 21-22 Judicial Conference Committee on the Administration of the Jury System; San Juan, PR  
 Jan. 21-23 Seminar for Federal Public Defenders; San Antonio, TX  
 Jan. 21-25 Introduction to COURTRAN II STARS & INDEX Training; Washington, DC  
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## THE THIRD BRANCH

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 ISSN 0040-6120

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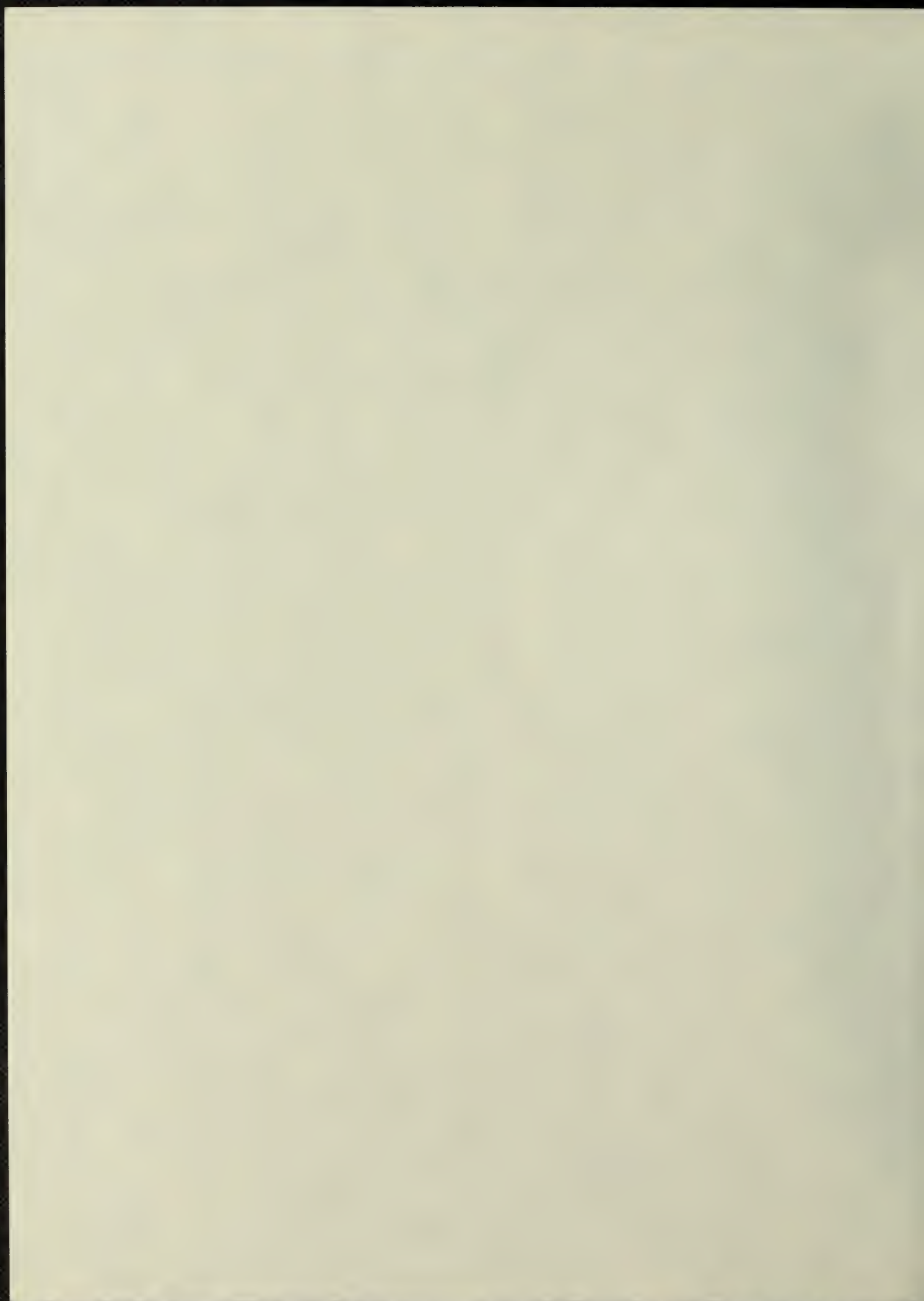
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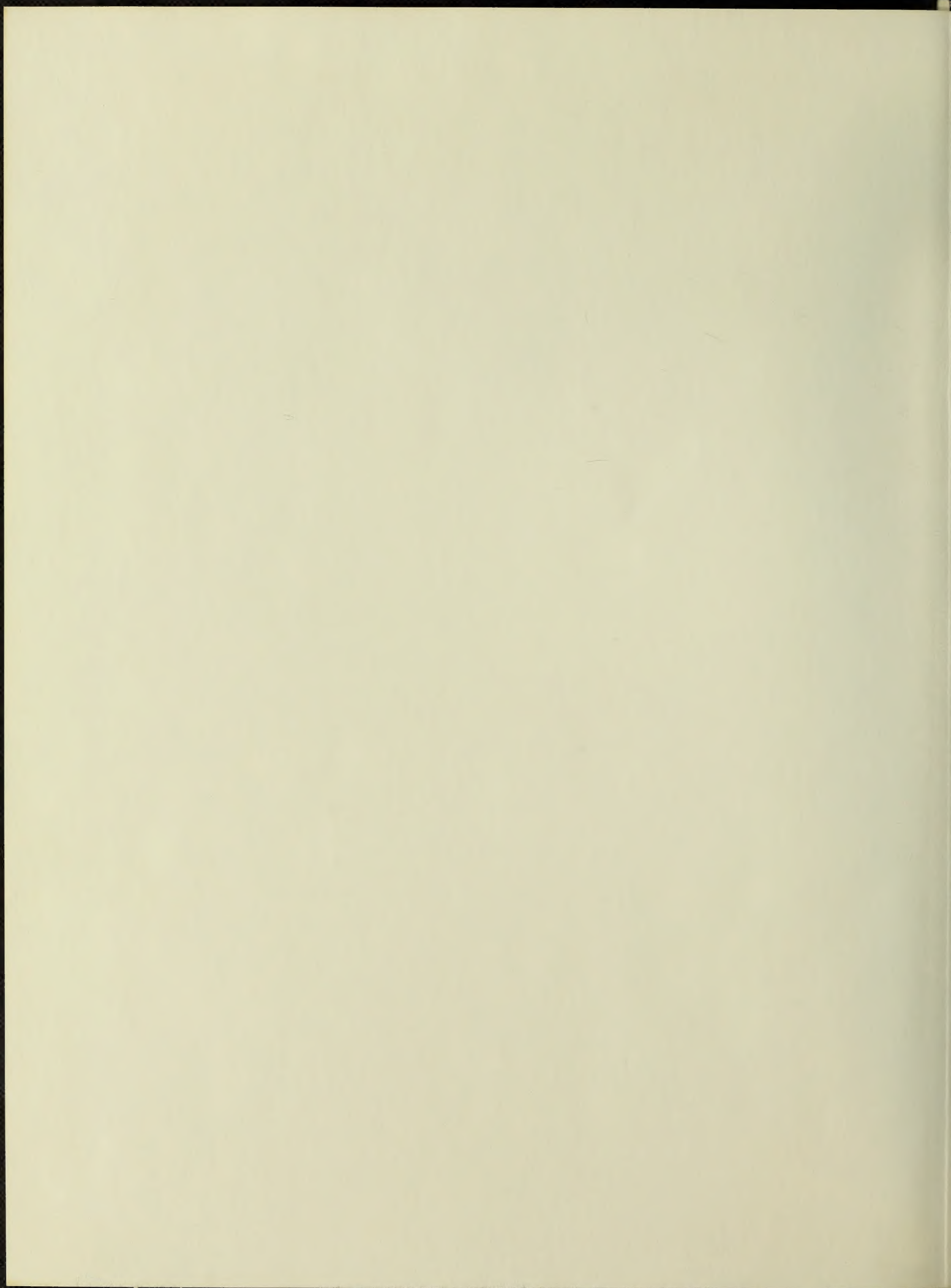


















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